

109TH CONGRESS  
1ST SESSION

# H. R. 1960

To amend the Internal Revenue Code of 1986 to expand pension coverage and savings opportunities and to provide other pension reforms.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 2005

Mr. PORTMAN introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to expand pension coverage and savings opportunities and to provide other pension reforms.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Pension Preservation and Savings Expansion Act of  
6       2005”.

7       (b) TABLE OF CONTENTS.—The table of contents of  
8       this Act is as follows:

Sec. 1. Short title; table of contents.

## TITLE I—MAKING TODAY’S RETIREMENT SAVINGS OPPORTUNITIES PERMANENT

Sec. 101. Pensions and individual retirement arrangement provisions of Economic Growth and Tax Relief Reconciliation Act of 2001 made permanent.

Sec. 102. Saver’s credit made permanent.

## TITLE II—BUILDING AND PRESERVING RETIREMENT ASSETS AND ENHANCING PORTABILITY

Sec. 201. Retirement savings account.

Sec. 202. Expansion of Saver’s credit.

Sec. 203. Faster vesting of employer nonelective contributions.

Sec. 204. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.

Sec. 205. Enhancing portability of after-tax amounts.

Sec. 206. IRA eligibility for the disabled.

Sec. 207. Exclusion of certain qualified annuity payments and facilitation of such payments and rollovers.

Sec. 208. Exclusion of certain nonqualified annuity payments.

Sec. 209. Increasing participation through automatic contribution arrangements.

Sec. 210. Facilitating longevity insurance.

Sec. 211. Direct payment of tax refunds to individual retirement plans.

Sec. 212. Treatment of qualified retirement planning services.

Sec. 213. Repeal of combined plan deduction limit.

## TITLE III—EXPANDING SMALL BUSINESS RETIREMENT PLAN COVERAGE AND MAKING THE ELECTIVE DEFERRAL RULES SIMPLER AND MORE UNIFORM

Sec. 301. Allow additional nonelective contributions to SIMPLE Plans.

Sec. 302. Conform matching contribution rules for SIMPLE IRAs and SIMPLE 401(k)s.

Sec. 303. Uniform catch-up contribution rule.

Sec. 304. Uniform definition of compensation.

Sec. 305. Uniform withdrawal rules.

Sec. 306. Allow level dollar contributions to SEPs.

Sec. 307. Tax treatment of certain nontrade or business SEP contributions.

Sec. 308. Uniform availability of designated RSA contributions.

Sec. 309. Allow certain plan transfers and mergers.

## TITLE IV—EXPANDING RETIREMENT SAVINGS FOR TAX-EXEMPT ORGANIZATION AND GOVERNMENT EMPLOYEES

Sec. 401. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.

Sec. 402. Clarifications regarding purchase of permissive service credit.

Sec. 403. Eligibility for participation in retirement plans.

Sec. 404. Clarification of minimum distribution rules.

Sec. 405. Church plan rule.

Sec. 406. Clarification of treatment of Indian tribal governments.

Sec. 407. Deferral agreements.

Sec. 408. Plans maintained by State or local governments.

Sec. 409. Clarification of treatment of section 403(b) programs.

#### TITLE V—SIMPLIFICATION AND EQUITY

- Sec. 501. Updating and simplifying the minimum distribution rules.
- Sec. 502. Clarification of catch-up contributions.
- Sec. 503. Treatment of unclaimed benefits.
- Sec. 504. Allow direct rollovers from retirement plans to RSA.
- Sec. 505. Reform excise tax on excess contributions.
- Sec. 506. Intermediate sanctions for inadvertent failures.
- Sec. 507. Clarification of substantially equal periodic payment rule.
- Sec. 508. Clarification of treatment of distributions of annuity contracts.
- Sec. 509. Golden parachute excise tax to apply to excessive employee remuneration paid by corporation after declaration of bankruptcy.
- Sec. 510. Differential pay.
- Sec. 511. Excess benefit plans.
- Sec. 512. Tax treatment of employee contributions to contributory defined benefit plans.
- Sec. 513. Protecting older, longer service participants.
- Sec. 514. Clarification regarding elective deferrals.
- Sec. 515. Reform of the minimum participation rule.

#### TITLE VI—IMPROVEMENTS IN PENSION SECURITY

- Sec. 601. Periodic pension benefits statements.
- Sec. 602. Inapplicability of relief from fiduciary liability during blackout periods.
- Sec. 603. Diversification requirements for defined contribution plans that hold employer securities.
- Sec. 604. Effective dates and related rules.

#### TITLE VII—OTHER TAX PROVISIONS RELATING TO PENSIONS

- Sec. 701. Reporting simplification.
- Sec. 702. Improvement of Employee Plans Compliance Resolution System.
- Sec. 703. Extension of moratorium on application of certain nondiscrimination rules to all governmental plans.
- Sec. 704. Notice and consent period regarding distributions.
- Sec. 705. Qualified group legal services plans.
- Sec. 706. Tax-free distributions from individual retirement plans for charitable purposes.

#### TITLE VIII—MISCELLANEOUS PROVISIONS

- Sec. 801. Provisions relating to plan amendments.

1 **TITLE I—MAKING TODAY’S RE-**  
2 **TIREMENT SAVINGS OPPOR-**  
3 **TUNITIES PERMANENT**

4 **SEC. 101. PENSIONS AND INDIVIDUAL RETIREMENT AR-**  
5 **RANGEMENT PROVISIONS OF ECONOMIC**  
6 **GROWTH AND TAX RELIEF RECONCILIATION**  
7 **ACT OF 2001 MADE PERMANENT.**

8 (a) IN GENERAL.—Section 901 of the Economic  
9 Growth and Tax Relief Reconciliation Act of 2001 is  
10 amended by adding at the end the following new sub-  
11 section:

12 “(c) EXCEPTION.—Subsections (a) and (b) shall not  
13 apply to the provisions of, and amendments made by, sub-  
14 titles (A) through (F) of title VI (relating to pension and  
15 individual retirement arrangement provisions).”.

16 (b) CONFORMING AMENDMENTS.—Section 901(b) of  
17 such Act is amended—

18 (1) by striking “and the Employee Retirement  
19 Income Security Act of 1974” in the text, and

20 (2) by striking “OF CERTAIN LAWS” in the  
21 heading.

22 **SEC. 102. SAVER’S CREDIT MADE PERMANENT.**

23 (a) IN GENERAL.—Section 25B of the Internal Rev-  
24 enue Code of 1986 (relating to elective deferrals and IRA

1 contributions by certain individuals) is amended by strik-  
 2 ing subsection (h).

3 (b) EFFECTIVE DATE.—The amendment made by  
 4 this section shall apply to taxable years beginning after  
 5 December 31, 2005.

6 **TITLE II—BUILDING AND PRE-**  
 7 **SERVING RETIREMENT AS-**  
 8 **SETS AND ENHANCING PORT-**  
 9 **ABILITY**

10 **SEC. 201. RETIREMENT SAVINGS ACCOUNT.**

11 (a) RETIREMENT SAVINGS ACCOUNT.—

12 (1) NAME CHANGED FROM ROTH IRA, ETC.—

13 (A) IN GENERAL.—The Internal Revenue  
 14 Code of 1986 is amended—

15 (i) by striking “a” each place it imme-  
 16 diately precedes “Roth” and inserting  
 17 “an”,

18 (ii) by striking “Roth IRA” and  
 19 “Roth IRAs” each place such terms appear  
 20 and inserting “RSA” and “RSAs”, respec-  
 21 tively, and

22 (iii) by striking “Roth contribution”,  
 23 “Roth contributions”, “Roth account” and  
 24 “Roth accounts” each place such terms ap-  
 25 pear and inserting “RSA contribution”,

1 “RSA contributions”, “RSA account”, and  
 2 “RSA accounts”, respectively.

3 (B) RSA DEFINED.—Subsection (a) of sec-  
 4 tion 7701 of such Code is amended by adding  
 5 at the end the following paragraph:

6 “(48) RSA.—The term ‘RSA’ means a retire-  
 7 ment savings account described in section 408A.”.

8 (2) UNIVERSAL AVAILABILITY.—Subsection (c)  
 9 of section 408A is amended—

10 (A) by striking paragraph (3), and

11 (B) by redesignating paragraphs (4), (5),  
 12 (6), and (7) as paragraphs (3), (4), (5), and  
 13 (6), respectively.

14 (3) REPEAL OF 5-YEAR RULE.—Paragraph (2)  
 15 of section 408A(d) of such Code is amended by  
 16 striking subparagraph (B) and redesignating sub-  
 17 paragraph (C) as subparagraph (B).

18 (4) INCOME OVER 4 YEARS.—Clause (iii) of sec-  
 19 tion 408A(d)(3)(A) of such Code is amended by  
 20 striking “January 1, 1999” and inserting “after De-  
 21 cember 31, 2005, and before January 1, 2007”.

22 (5) ORDERING RULE.—Subparagraph (B) of  
 23 section 408A(d)(4) of such Code is amended to read  
 24 as follows:

“(B) ORDERING RULES.—For purposes of applying this section and section 72 to any distribution from an RSA, such distribution shall be treated as made—

“(i) from income attributable to contributions to the RSA to the extent that the amount of such distribution, when added to all previous distributions from the RSA, does not exceed the aggregate income attributable to contributions to the RSA, and

“(ii) to the extent that such distribution exceeds such income, from contributions in the following order:

“(I) Contributions other than qualified rollover contributions to which paragraph (3) applies.

“(II) Qualified rollover contributions to which paragraph (3) applies on a first-in, first-out basis.

For purposes of this subparagraph, income attributable to contributions to the RSA shall include income that is attributable to contributions to another RSA or to a designated RSA account and that is rolled over into the RSA.”.

1 (b) CONFORMING AMENDMENTS.—

2 (1) Paragraph (2) of section 402A(d) of such  
3 Code is amended by striking subparagraph (B) and  
4 by redesignating subparagraph (C) as subparagraph  
5 (B).

6 (2) Subsection (d) of section 402A of such Code  
7 is amended by adding at the end the following:

8 “(5) ORDERING RULES.—For purposes of ap-  
9 plying section 72 to any distribution from a partici-  
10 pant’s designated RSA account, such distribution  
11 shall be treated as made from income attributable to  
12 contributions to the designated RSA account to the  
13 extent that the amount of such distribution, when  
14 added to all previous distributions from the des-  
15 ignated RSA account, does not exceed the aggregate  
16 income attributable to contributions to the des-  
17 ignated RSA account. For purposes of this para-  
18 graph, income attributable to contributions to a des-  
19 ignated RSA account shall include income that is at-  
20 tributable to contributions to another such account  
21 or to an RSA and that is rolled over into the des-  
22 ignated RSA account.”.

23 (3) Subparagraph (B) of section 4973(f)(1) and  
24 subparagraph (B) of section 4973(f)(2) of such Code



1 are each amended by striking “sections 408A(c)(2)  
 2 and (c)(3)” and inserting “section 408A(c)(2)”.

3 (c) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by  
 5 this section shall apply to years beginning after De-  
 6 cember 31, 2005.

7 (2) SPECIAL RULE.—The amendment made by  
 8 subsection (a)(5) shall only apply to the extent that  
 9 distributions from RSAs exceed the amount of con-  
 10 tributions to such RSAs that have been made but  
 11 not distributed as of December 31, 2005.

12 **SEC. 202. EXPANSION OF SAVER’S CREDIT.**

13 (a) EXPANSION.—The table contained in subsection  
 14 (b) of section 25B of the Internal Revenue Code of 1986  
 15 (relating to applicable percentage) is amended to read as  
 16 follows:

“Adjusted Gross Income						
Joint return		Head of Household		All other cases		Applicable percentage
Over	Not over	Over	Not over	Over	Not over	
	\$30,000		\$22,500		\$15,000	50
30,000	40,000	22,500	30,000	15,000	20,000	20
40,000	50,000	30,000	37,500	20,000	25,000	10
50,000		37,500		25,000		0”.

17 (b) ADJUSTMENT FOR INFLATION.—Section 25B of  
 18 such Code (as amended by subsection (a)) is further  
 19 amended by redesignating subsection (h) as subsection (i)  
 20 and by inserting after subsection (g) the following new  
 21 subsection:

1 “(h) ADJUSTMENT FOR INFLATION.—

2 “(1) IN GENERAL.—In the case of any taxable  
3 year beginning after December 31, 2008, each dollar  
4 amount in the table contained in subsection (b) in  
5 the columns under the heading ‘All other cases’ shall  
6 be increased by an amount equal to—

7 “(A) such dollar amount, multiplied by

8 “(B) the cost-of-living adjustment deter-  
9 mined under section 1(f)(3) for such calendar  
10 year by substituting ‘calendar year 2007’ for  
11 ‘calendar year 1992’ in subparagraph (B)  
12 thereof.

13 If any increase under the preceding sentence is not  
14 a multiple of \$1,000, such increase shall be rounded  
15 to the nearest multiple of \$1,000.

16 “(2) ADJUSTMENT OF AMOUNTS RELATING TO  
17 JOINT RETURN AND HEAD OF HOUSEHOLD.—In the  
18 case of any taxable year beginning after December  
19 31, 2008—

20 “(A) there shall be substituted for each  
21 dollar amount in the table contained in sub-  
22 section (b) in the columns under the heading  
23 ‘Joint return’ a dollar amount equal to twice  
24 the corresponding dollar amount in such table

1 in the columns under the heading ‘All other  
2 cases’ (as increased under paragraph (1)), and

3 “(B) there shall be substituted for each  
4 dollar amount in the table contained in sub-  
5 section (b) in the columns under the heading  
6 ‘Head of household’ a dollar amount equal to  
7 1½ times the corresponding dollar amount in  
8 such table in the columns under the heading  
9 ‘All other cases’ (as increased under paragraph  
10 (1)).”.

11 (c) TESTING PERIOD.—Subparagraph (B) of section  
12 25B(d)(2) of such Code is amended to read as follows:

13 “(B) TESTING PERIOD.—For purposes of  
14 subparagraph (A), the testing period, with re-  
15 spect to a taxable year, is the period which in-  
16 cludes—

17 “(i) such taxable year, and

18 “(ii) the 3 preceding taxable years.”.

19 (d) TREATMENT AS REFUNDABLE.—

20 (1) CREDIT MOVED TO SUBPART RELATING TO  
21 REFUNDABLE CREDIT.—

22 (A) IN GENERAL.—Section 25B of such  
23 Code, as amended by this Act, is hereby moved  
24 to subpart C of part IV of subchapter A of

chapter 1 (relating to refundable credits) and inserted after section 35.

(B) TECHNICAL AMENDMENTS.—

(i) Section 36 of such Code is redesignated as section 37.

(ii) Section 25B of such Code (as moved by subparagraph (A)) is redesignated as section 36.

(iii) The table of sections for subpart A of such part is amended by striking the item relating to section 25B.

(iv) The table of sections for subpart C of such part is amended by redesignating the item relating to section 36 as an item relating to section 37 and by inserting after section 35 the following new item:

“Sec. 36. Elective deferrals and IRA contributions by certain individuals.”.

(2) MANDATORY DEPOSIT INTO QUALIFIED ACCOUNT.—

(A) NO REDUCTION OF TAX.—Subsection

(a) of section 36 of such Code, as moved and redesignated by paragraph (1), is amended by striking “credit against the tax imposed by this subtitle” and inserting “tax credit”.

1           (B) DEPOSIT INTO QUALIFIED AC-  
2           COUNT.—Subsection (g) of section 36 of such  
3           Code, as moved and redesignated by paragraph  
4           (1), is amended to read as follows:

5           “(g) DEPOSIT INTO QUALIFIED ACCOUNT.—

6           “(1) IN GENERAL.—Any amount allowed as a  
7           tax credit under subsection (a) shall not be allowed  
8           as a credit against any tax imposed by this subtitle  
9           but instead shall be treated as an overpayment  
10          under section 6401(b) and—

11           “(A) shall be paid on behalf of the indi-  
12          vidual taxpayer to an applicable retirement plan  
13          designated by the individual to be invested in a  
14          manner designated by the individual, except  
15          that in the case of a joint return, each spouse  
16          shall be entitled to designate an applicable re-  
17          tirement plan and investments with respect to  
18          payments attributable to such spouse, or

19           “(B) in the case of taxpayer who does not  
20          properly designate an applicable retirement plan  
21          in a timely manner or who designates an appli-  
22          cable retirement plan that does not accept such  
23          amount in a timely manner, shall be paid or  
24          credited on behalf of the individual taxpayer in  
25          a manner determined under rules prescribed by

1           the Secretary that provides treatment com-  
 2           parable to the treatment under subparagraph  
 3           (A).

4           “(2) APPLICABLE RETIREMENT PLAN.—For  
 5           purposes of this subsection, the term ‘applicable re-  
 6           tirement plan’ means a plan that elects to accept de-  
 7           posits under this subsection and that is described in  
 8           clause (iii), (iv), (v), or (vi) of section 402(c)(8)(B)  
 9           or in section 408A(b).

10          “(3) TREATMENT OF DIRECT PAYMENTS.—All  
 11          amounts paid under this subsection shall be treated  
 12          for purposes of this title as income attributable to—

13               “(A) an RSA contribution in the case of a  
 14               payments to an individual retirement plan, or

15               “(B) a designated RSA contribution in the  
 16               case of a payment to an applicable retirement  
 17               plan described in section 402A(e).”.

18          (e) REGULATION AND PROMOTION.—Section 36 of  
 19          such Code, as amended and redesignated by this section,  
 20          is amended by adding at the end the following new sub-  
 21          section:

22               “(i) REGULATION AND PROMOTION.—The Secretary  
 23          may prescribe such regulations and other guidance as may  
 24          be necessary or appropriate to carry out this section. The  
 25          Secretary shall also take such steps as he determines nec-

1 essary and appropriate to increase public awareness of the  
 2 credit provided under this section.”.

3 (f) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to taxable years beginning after  
 5 December 31, 2006.

6 **SEC. 203. FASTER VESTING OF EMPLOYER NONELECTIVE**  
 7 **CONTRIBUTIONS.**

8 (a) AMENDMENTS TO THE INTERNAL REVENUE  
 9 CODE OF 1986.—

10 (1) IN GENERAL.—Paragraph (2) of section  
 11 411(a) of the Internal Revenue Code of 1986 (relat-  
 12 ing to employer contributions) is amended to read as  
 13 follows:

14 “(2) EMPLOYER CONTRIBUTIONS.—

15 “(A) DEFINED BENEFIT PLANS.—

16 “(i) IN GENERAL.—In the case of a  
 17 defined benefit plan, a plan satisfies the  
 18 requirements of this paragraph if it satis-  
 19 fies the requirements of clause (ii) or (iii).

20 “(ii) 5-YEAR VESTING.—A plan satis-  
 21 fies the requirements of this clause if an  
 22 employee who has completed at least 5  
 23 years of service has a nonforfeitable right  
 24 to 100 percent of the employee’s accrued

1 benefit derived from employer contribu-  
 2 tions.

3 “(iii) 3 TO 7 YEAR VESTING.—A plan  
 4 satisfies the requirements of this clause if  
 5 an employee has a nonforfeitable right to  
 6 a percentage of the employee’s accrued  
 7 benefit derived from employer contribu-  
 8 tions determined under the following table:

<b>“Years of service</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

9 “(B) DEFINED CONTRIBUTION PLANS.—

10 “(i) IN GENERAL.—In the case of a  
 11 defined contribution plan, a plan satisfies  
 12 the requirements of this paragraph if it  
 13 satisfies the requirements of clause (ii) or  
 14 (iii).

15 “(ii) 3-YEAR VESTING.—A plan satis-  
 16 fies the requirements of this clause if an  
 17 employee who has completed at least 3  
 18 years of service has a nonforfeitable right  
 19 to 100 percent of the employee’s accrued  
 20 benefit derived from employer contribu-  
 21 tions.



1                   “(iii) 2 TO 6 YEAR VESTING.—A plan  
 2                   satisfies the requirements of this clause if  
 3                   an employee has a nonforfeitable right to  
 4                   a percentage of the employee’s accrued  
 5                   benefit derived from employer contribu-  
 6                   tions determined under the following table:

<b>“Years of service</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 .....	100.”.

7                   (2) CONFORMING AMENDMENT.—Section  
 8                   411(a) of such Code (relating to general rule for  
 9                   minimum vesting standards) is amended by striking  
 10                  paragraph (12).

11                  (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
 12 INCOME SECURITY ACT OF 1974.—

13                  (1) IN GENERAL.—Paragraph (2) of section  
 14                  203(a) of the Employee Retirement Income Security  
 15                  Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to  
 16                  read as follows:

17                  “(2)(A)(i) In the case of a defined benefit plan,  
 18                  a plan satisfies the requirements of this paragraph  
 19                  if it satisfies the requirements of clause (ii) or (iii).

20                  “(ii) A plan satisfies the requirements of this  
 21                  clause if an employee who has completed at least 5  
 22                  years of service has a nonforfeitable right to 100

1 percent of the employee's accrued benefit derived  
2 from employer contributions.

3 “(iii) A plan satisfies the requirements of this  
4 clause if an employee has a nonforfeitable right to  
5 a percentage of the employee's accrued benefit de-  
6 rived from employer contributions determined under  
7 the following table:

<b>“Years of service</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

8 “(B)(i) In the case of an individual account  
9 plan, a plan satisfies the requirements of this para-  
10 graph if it satisfies the requirements of clause (ii) or  
11 (iii).

12 “(ii) A plan satisfies the requirements of this  
13 clause if an employee who has completed at least 3  
14 years of service has a nonforfeitable right to 100  
15 percent of the employee's accrued benefit derived  
16 from employer contributions.

17 “(iii) A plan satisfies the requirements of this  
18 clause if an employee has a nonforfeitable right to  
19 a percentage of the employee's accrued benefit de-  
20 rived from employer contributions determined under  
21 the following table:

<b>“Years of service</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 .....	100.”.

1           (2)     CONFORMING     AMENDMENT.—Section  
2     203(a) of such Act is amended by striking para-  
3     graph (4).

4     (c) EFFECTIVE DATES.—

5           (1) IN GENERAL.—Except as provided in para-  
6     graph (2), the amendments made by this section  
7     shall apply to contributions for plan years beginning  
8     after December 31, 2005.

9           (2) COLLECTIVE BARGAINING AGREEMENTS.—  
10     In the case of a plan maintained pursuant to one or  
11     more collective bargaining agreements between em-  
12     ployee representatives and one or more employers  
13     ratified before the date of the enactment of this Act,  
14     the amendments made by this section shall not apply  
15     to contributions on behalf of employees covered by  
16     any such agreement for plan years beginning before  
17     the earlier of—

18                 (A) the later of—

19                         (i) the date on which the last of such  
20             collective bargaining agreements termi-  
21             nates (determined without regard to any

1 extension thereof on or after such date of  
 2 the enactment); or

3 (ii) January 1, 2006; or

4 (B) January 1, 2008.

5 (3) SERVICE REQUIRED.—With respect to any  
 6 plan, the amendments made by this section shall not  
 7 apply to any employee before the date that such em-  
 8 ployee has 1 hour of service under such plan in any  
 9 plan year to which the amendments made by this  
 10 section apply.

11 **SEC. 204. ALLOW ROLLOVERS BY NONSPOUSE BENE-**  
 12 **FICIARIES OF CERTAIN RETIREMENT PLAN**  
 13 **DISTRIBUTIONS.**

14 (a) IN GENERAL.—

15 (1) QUALIFIED PLANS.—Section 402(c) of the  
 16 Internal Revenue Code of 1986 (relating to rollovers  
 17 from exempt trusts) is amended by adding at the  
 18 end the following new paragraph:

19 “(11) DISTRIBUTIONS TO INHERITED INDI-  
 20 VIDUAL RETIREMENT PLAN OF NONSPOUSE BENE-  
 21 FICIARY.—

22 “(A) IN GENERAL.—If, with respect to any  
 23 portion of a distribution from an eligible retire-  
 24 ment plan of a deceased employee, a direct  
 25 trustee-to-trustee transfer is made to an indi-

1           vidual retirement plan described in clause (i) or  
2           (ii) of paragraph (8)(B) established for the pur-  
3           poses of receiving the distribution on behalf of  
4           an individual who is a designated beneficiary  
5           (as defined by section 401(a)(9)(E)) of the em-  
6           ployee and who is not the surviving spouse of  
7           the employee—

8                   “(i) the transfer shall be treated as an  
9                   eligible rollover distribution for purposes of  
10                  this subsection,

11                  “(ii) the individual retirement plan  
12                  shall be treated as an inherited individual  
13                  retirement account or individual retirement  
14                  annuity (within the meaning of section  
15                  408(d)(3)(C)) for purposes of this title,  
16                  and

17                  “(iii) section 401(a)(9)(B) (other than  
18                  clause (iv) thereof) shall apply to such  
19                  plan.

20                  “(B) CERTAIN TRUSTS TREATED AS BENE-  
21                  FICIARIES.—For purposes of this paragraph, to  
22                  the extent provided in rules prescribed by the  
23                  Secretary, a trust maintained for the benefit of  
24                  one or more designated beneficiaries shall be

1           treated in the same manner as a trust des-  
2           ignated beneficiary.”.

3           (2) SECTION 403(a) PLANS.—Subparagraph  
4           (B) of section 403(a)(4) of such Code (relating to  
5           rollover amounts) is amended by inserting “and  
6           (11)” after “(7)”.

7           (3) SECTION 403(b) PLANS.—Subparagraph  
8           (B) of section 403(b)(8) of such Code (relating to  
9           rollover amounts) is amended by striking “and (9)”  
10          and inserting “, (9), and (11)”.

11          (4) SECTION 457 PLANS.—Subparagraph (B) of  
12          section 457(e)(16) of such Code (relating to rollover  
13          amounts) is amended by striking “and (9)” and in-  
14          serting “, (9), and (11)”.

15          (b) EFFECTIVE DATE.—The amendments made by  
16          this section shall apply to distributions after December 31,  
17          2005.

18      **SEC. 205. ENHANCING PORTABILITY OF AFTER-TAX**  
19                                      **AMOUNTS.**

20          (a) ROLLOVERS BETWEEN QUALIFIED PLANS AND  
21          SECTION 403(b) PLANS.—Subparagraph (A) of section  
22          402(c)(2) of such Code (relating to maximum amount  
23          which may be rolled over) is amended by striking “and  
24          which” and inserting “or to an annuity contract described  
25          in section 403(b) and such plan or contract”.

1 (b) ROLLOVERS TO DEFINED BENEFIT PLANS.—  
 2 Subparagraph (A) of section 402(c)(2) of such Code (re-  
 3 lating to maximum amount which may be rolled over) is  
 4 amended by striking “which is a part of a plan which is  
 5 a defined contribution plan and”.

6 (c) EFFECTIVE DATE.—The amendment made by  
 7 subsection (a) shall apply to taxable years beginning after  
 8 December 31, 2005.

9 **SEC. 206. IRA ELIGIBILITY FOR THE DISABLED.**

10 (a) IN GENERAL.—Subsection (f) of section 219 of  
 11 the Internal Revenue Code of 1986 (relating to other defi-  
 12 nitions and special rules) is amended by adding at the end  
 13 the following:

14 “(8) SPECIAL RULE FOR CERTAIN DISABLED  
 15 INDIVIDUALS.—In the case of an individual—

16 “(A) who is disabled (within the meaning  
 17 of section 72(m)(7)), and

18 “(B) who has not attained the applicable  
 19 age (as defined in section 401(a)(9)(H)) before  
 20 the close of the taxable year,

21 subparagraph (B) of subsection (b)(1) shall not  
 22 apply.”.

23 (b) EFFECTIVE DATE.—The amendment made by  
 24 this section shall apply to taxable years beginning after  
 25 December 31, 2005.

1 **SEC. 207. EXCLUSION OF CERTAIN QUALIFIED ANNUITY**  
2 **PAYMENTS AND FACILITATION OF SUCH PAY-**  
3 **MENTS AND ROLLOVERS.**

4 (a) IN GENERAL.—

5 (1) QUALIFIED PLANS.—Subsection (e) of sec-  
6 tion 402 of the Internal Revenue Code of 1986 (re-  
7 lating to exempt trusts) is amended by adding at the  
8 end the following new paragraph:

9 “(7) EXCLUSION OF PERCENTAGE OF LIFETIME  
10 ANNUITY PAYMENTS.—

11 “(A) IN GENERAL.—In the case of a life-  
12 time annuity payment to a qualified distributee  
13 from a qualified trust (within the meaning of  
14 subsection (c)(8)(A)) maintained in connection  
15 with a defined contribution plan, gross income  
16 shall not include 10 percent of the amount oth-  
17 erwise includible in gross income (determined  
18 without regard to this paragraph).

19 “(B) 5-YEAR LIMITATION.—Subparagraph  
20 (A) shall apply to a qualified distributee only in  
21 the first 5 taxable years in which the qualified  
22 distributee receives lifetime annuity payments  
23 for the entire taxable year. For purposes of this  
24 subparagraph, all lifetime annuity payments re-  
25 ceived by a qualified distributee shall be taken  
26 into account to the extent that such payments



1 are subject to this paragraph or to rules similar  
2 to the rules of this paragraph (other than sec-  
3 tions 72(b)(5) and 101(d)(4)).

4 “(C) LIMITATION.—

5 “(i) IN GENERAL.—With respect to  
6 any qualified distributee, subparagraph (A)  
7 shall not apply to any lifetime annuity pay-  
8 ment to the extent that the portion of such  
9 payment includible in gross income, when  
10 added to the portion of all previous and si-  
11 multaneous lifetime annuity payments that  
12 was included in gross income and that was  
13 paid to such qualified distributee during  
14 the taxable year, exceeds 50 percent of the  
15 applicable amount for such year under sec-  
16 tion 415(c)(1)(A). For purposes of the pre-  
17 ceding sentence, the portion of lifetime an-  
18 nuity payments includible in gross income  
19 shall be determined without regard to sub-  
20 paragraph (A).

21 “(ii) AGGREGATION RULE.—For pur-  
22 poses of this subparagraph, all lifetime an-  
23 nuity payments received by a qualified dis-  
24 tributee shall be taken into account to the  
25 extent that such payments are subject to

1           this paragraph or to rules similar to the  
2           rules of this paragraph (other than sec-  
3           tions 72(b)(5) and 101(d)(4)).

4           “(D) DEFINITIONS.—For purposes of this  
5           paragraph—

6                   “(i) LIFETIME ANNUITY PAYMENT.—

7                           “(I) IN GENERAL.—The term  
8                           ‘lifetime annuity payment’ means a  
9                           distribution which is a part of a series  
10                          of substantially equal periodic pay-  
11                          ments (made not less frequently than  
12                          annually) made over the life of the  
13                          qualified distributee or the joint lives  
14                          of the qualified distributee and the  
15                          qualified distributee’s designated ben-  
16                          eficiary.

17                          “(II) CERTAIN FLUCTUATING  
18                          PAYMENTS.—Annuity payments shall  
19                          not fail to be treated as part of a se-  
20                          ries of substantially equal periodic  
21                          payments merely because the amount  
22                          of the periodic payments may vary in  
23                          accordance with investment experi-  
24                          ence, reallocations among investment  
25                          options, actuarial gains or losses, cost

1 of living indices, a constant percent-  
2 age (not less than zero) applied not  
3 less frequently than annually, or simi-  
4 lar fluctuating criteria.

5 “(III) CERTAIN CHANGES IN THE  
6 MODE OF PAYMENT.—Annuity pay-  
7 ments shall not fail to be treated as  
8 part of a series of substantially equal  
9 periodic payments merely because the  
10 period between each such payment is  
11 lengthened or shortened, but only if at  
12 all times such period is not longer  
13 than one year.

14 “(IV) PERMITTED REDUC-  
15 TIONS.—Annuity payments shall not  
16 fail to be treated as part of a series  
17 of substantially equal periodic pay-  
18 ments merely because, in the case of  
19 an annuity payable over the lives of  
20 the qualified distributee and the quali-  
21 fied distributee’s designated bene-  
22 ficiary, the amounts paid after the  
23 death of the qualified distributee or  
24 the qualified distributee’s designated

1 beneficiary are less than the amounts  
2 payable during their joint lives.

3 “(V) CERTAIN CONTRACT BENE-  
4 FITS.—The availability of a commuta-  
5 tion benefit or other feature permit-  
6 ting acceleration of annuity payments  
7 (or a modification of the period dur-  
8 ing which such a benefit is available),  
9 a minimum period of payments cer-  
10 tain, or a minimum amount to be paid  
11 in any event shall not affect the treat-  
12 ment of a distribution as a lifetime  
13 annuity payment.

14 “(VI) TRUST PAYMENTS.—In the  
15 case of lifetime annuity payments  
16 being made to a qualified trust, pay-  
17 ments by the qualified trust to a  
18 qualified distributee of the entire  
19 amount received by the qualified trust  
20 with respect to the qualified dis-  
21 tributee shall constitute lifetime annu-  
22 ity payments.

23 “(VII) QUALIFIED DOMESTIC RE-  
24 LATIONS ORDERS.—Annuity payments  
25 shall not fail to be treated as a series

1 of substantially equal periodic pay-  
 2 ments merely because the payments  
 3 are reduced on account of a qualified  
 4 domestic relations order (within the  
 5 meaning of section 414(p)) that be-  
 6 comes effective after the commence-  
 7 ment of the annuity payments.

8 “(ii) QUALIFIED DISTRIBUTE.—The  
 9 term ‘qualified distributee’ means the em-  
 10 ployee, the surviving spouse of the em-  
 11 ployee, and an alternate payee who is the  
 12 spouse or former spouse of the employee.

13 “(E) RECAPTURE TAX.—

14 “(i) IN GENERAL.—If—

15 “(I) an amount is not includible  
 16 in gross income by reason of subpara-  
 17 graph (A), and

18 “(II) the series of payments of  
 19 which such payment is a part is sub-  
 20 sequently modified (other than by rea-  
 21 son of death or disability) so that  
 22 some or all future payments are not  
 23 lifetime annuity payments,

24 the qualified distributee’s gross income for  
 25 the first taxable year in which such modi-

1           fication occurs shall be increased by an  
 2           amount, determined under rules prescribed  
 3           by the Secretary, equal to the amount  
 4           which (but for subparagraph (A)) would  
 5           have been includible in the qualified  
 6           distributee's gross income if the modifica-  
 7           tion had been in effect at all times, plus in-  
 8           terest for the deferral period at the under-  
 9           payment rate established under section  
 10          6621.

11           “(ii) DEFERRAL PERIOD.—For pur-  
 12          poses of this subparagraph, the term ‘de-  
 13          ferral period’ means the period beginning  
 14          with the taxable year in which (without re-  
 15          gard to subparagraph (A)) the payment  
 16          would have been includible in gross income  
 17          and ending with the taxable year in which  
 18          the modification described in clause (i)(II)  
 19          occurs.

20          “(F) PHASEOUT OF EXCLUSION.—

21           “(i) IN GENERAL.—In any taxable  
 22          year, the exclusion from gross income for  
 23          any qualified distributee under this para-  
 24          graph and under rules similar to the rules  
 25          of this paragraph (other than sections

1                   72(b)(5) and 101(d)(4)) shall not exceed  
2                   the income-adjusted limit.

3                   “(ii) INCOME-ADJUSTED LIMIT.—For  
4                   purposes of this subparagraph, the income-  
5                   adjusted limit shall be—

6                   “(I) 10 percent of the limitation  
7                   described in subparagraph (C), re-  
8                   duced (but not below zero) by

9                   “(II) the amount determined  
10                  under clause (iii).

11                  “(iii) AMOUNT DETERMINED.—The  
12                  amount determined under this clause shall  
13                  be the amount which bears the same ratio  
14                  to the amount described in clause (ii)(I)  
15                  as—

16                  “(I) the excess of the taxpayer’s  
17                  adjusted gross income for such tax-  
18                  able year over the applicable dollar  
19                  amount, bears to

20                  “(II) \$15,000 (\$30,000 for a  
21                  joint return).

22                  “(iv) LIMITATION ON REDUCTION.—  
23                  The income-adjusted limit shall not be re-  
24                  duced below \$200 by clause (ii)(II) unless

(without regard to this clause) such limit is reduced to zero.

“(v) ROUNDING RULE.—Any income-adjusted limit determined under this subparagraph which is not a multiple of \$10 shall be rounded to the next lowest multiple of \$10.

“(vi) ADJUSTED GROSS INCOME.—For purposes of this subparagraph, adjusted gross income of any taxpayer shall be determined in the same manner as under section 219(g)(3) except that any amount included in income under section 408A(d)(3) shall not be taken into account.

“(vii) APPLICABLE DOLLAR LIMIT.—For purposes of this subparagraph, the applicable dollar amount is—

“(I) in the case of a taxpayer filing a joint return, an amount equal to twice the amount in effect under subclause (II),

“(II) in the case of any other taxpayer (other than a married individual filing a separate return), \$60,000, and



1 “(III) in the case of a married  
 2 individual filing a separate return,  
 3 zero.

4 “(viii) SPECIAL RULE FOR MARRIED  
 5 INDIVIDUALS FILING SEPARATELY AND  
 6 LIVING APART.—Section 219(g)(4) shall  
 7 apply for purposes of this subparagraph.

8 “(ix) COST-OF-LIVING ADJUST-  
 9 MENT.—In the case of taxable years begin-  
 10 ning after December 31, 2006, the Sec-  
 11 retary shall adjust the \$60,000 amount in  
 12 clause (vii)(II) at the same time and in the  
 13 same manner as under section 415(d), ex-  
 14 cept that the base period shall be the cal-  
 15 endar quarter beginning July 1, 2005, and  
 16 any increase under this clause which is not  
 17 a multiple of \$5,000 shall be rounded to  
 18 the next lowest multiple of \$5,000.

19 “(G) INVESTMENT IN THE CONTRACT.—  
 20 For purposes of section 72, the investment in  
 21 the contract shall be determined without regard  
 22 to this paragraph.”.

23 (2) SECTION 403(a) PLANS.—Paragraph (4) of  
 24 section 403(a) of such Code (relating to qualified

annuity plans) is amended by adding at the end the following new subparagraph:

“(C) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS.—Rules similar to the rules of section 402(e)(7) shall apply to distributions under any annuity contract to which this subsection applies.”.

(3) SECTION 403(b) PLANS.—Section 403(b) of such Code (relating to purchased annuities) is amended by adding at the end the following new paragraph:

“(14) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS.—Rules similar to the rules of section 402(e)(7) shall apply to distributions under any annuity contract or custodial account to which this subsection applies.”.

(4) IRAS.—Section 408(d) of such Code (relating to tax treatment of distributions) is amended by adding at the end the following new paragraph:

“(8) EXCLUSION OF PERCENTAGE OF LIFETIME ANNUITY PAYMENTS.—Rules similar to the rules of section 402(e)(7) shall apply to distributions out of an individual retirement plan.”.

(5) SECTION 457 PLANS.—Section 457(e) of such Code (relating to special rules for deferred

1 compensation plans) is amended by adding at the  
2 end the following new paragraph:

3 “(18) EXCLUSION OF PERCENTAGE OF LIFE-  
4 TIME ANNUITY PAYMENTS.—Rules similar to the  
5 rules of section 402(e)(7) shall apply to distributions  
6 from an eligible deferred compensation plan of an el-  
7 igible employer described in subsection (e)(1)(A).”.

8 (b) FACILITATION OF CERTAIN ROLLOVERS AND AN-  
9 NUITY DISTRIBUTIONS.—Section 404(c) of the Employee  
10 Retirement Income Security Act of 1974 (29 U.S.C.  
11 1104(c)) is amended by adding at the end the following  
12 new paragraph:

13 “(7)(A) In the case of a pension plan which makes  
14 a transfer under section 401(a)(31)(A) of the Internal  
15 Revenue Code of 1986 to an individual retirement plan  
16 (as defined in section 7701(a)(37) of such Code) in con-  
17 nection with a participant or beneficiary or makes a dis-  
18 tribution to a participant or beneficiary of an annuity con-  
19 tract described in subparagraph (B), the participant or  
20 beneficiary shall, for purposes of paragraph (1), be treated  
21 as exercising control over the transfer or distribution if—

22 “(i) the participant or beneficiary elected such  
23 transfer or distribution, and

24 “(ii) in connection with such election, the par-  
25 ticipant or beneficiary was given an opportunity to

1       elect any other individual retirement plan (in the  
2       case of a transfer) or any other annuity contract de-  
3       scribed in subparagraph (B) (in the case of a dis-  
4       tribution).

5       “(B) An annuity contract is described in this sub-  
6       paragraph if it provides, either on an immediate or de-  
7       ferred basis, a series of substantially equal periodic pay-  
8       ments (not less frequently than annually) for the life of  
9       the participant or beneficiary or the joint lives of the par-  
10      ticipant or beneficiary and such individual’s designated  
11      beneficiary. Annuity payments shall not fail to be treated  
12      as part of a series of substantially equal periodic payments  
13      merely because the amount of the periodic payments may  
14      vary in accordance with investment experience, realloca-  
15      tions among investment options, actuarial gains or losses,  
16      cost of living indices, a constant percentage (not less than  
17      zero) applied not less frequently than annually, or similar  
18      fluctuating criteria. Annuity payments shall not fail to be  
19      treated as part of a series of substantially equal periodic  
20      payments merely because the period between each such  
21      payment is lengthened or shortened, but only if at all  
22      times such period is not longer than one year. The avail-  
23      ability of a commutation benefit or other feature permit-  
24      ting acceleration of annuity payments (or a modification  
25      of the period during which such a benefit is available),

1 a minimum period of payments certain, or a minimum  
2 amount to be paid in any event shall not affect the treat-  
3 ment of an annuity contract as an annuity contract de-  
4 scribed in this subparagraph.

5 “(C) Under regulations prescribed by the Secretary,  
6 this paragraph shall apply without regard to whether the  
7 particular individual retirement plan receiving the transfer  
8 or the particular annuity contract being distributed is spe-  
9 cifically identified by the pension plan as available to the  
10 participant or beneficiary.

11 “(D) Notwithstanding the preceding provisions of  
12 this paragraph, paragraph (1)(B) shall not apply with re-  
13 spect to liability under section 406 in connection with the  
14 specific identification of any individual retirement plan or  
15 annuity contract as being available to the participant or  
16 beneficiary.”.

17 (c) EFFECTIVE DATE.—

18 (1) EXCLUSION.—The amendments made by  
19 subsection (a) shall apply to distributions after De-  
20 cember 31, 2005.

21 (2) FACILITATION.—The amendments made by  
22 subsection (b) shall take effect on the date of enact-  
23 ment of this Act.

24 (3) ISSUANCE OF FINAL REGULATIONS.—Final  
25 regulations under section 404(c)(7) of the Employee

1 Retirement Income Security Act of 1974 (added by  
 2 this section) shall be issued no later than 1 year  
 3 after the date of the enactment of this Act.

4 **SEC. 208. EXCLUSION OF CERTAIN NONQUALIFIED ANNU-**  
 5 **ITY PAYMENTS.**

6 (a) IN GENERAL.—

7 (1) NONQUALIFIED ANNUITIES.—

8 (A) IN GENERAL.—Section 72(b) of the In-  
 9 ternal Revenue Code of 1986 (relating to annu-  
 10 ities) is amended by adding at the end the fol-  
 11 lowing new paragraph:

12 “(5) EXCLUSION OF PERCENTAGE OF LIFETIME  
 13 ANNUITY PAYMENTS.—

14 “(A) IN GENERAL.—In the case of a life-  
 15 time annuity payment to a qualified distributee,  
 16 gross income shall not include 10 percent of the  
 17 amount otherwise includible in gross income  
 18 (determined without regard to this paragraph).

19 “(B) 5-YEAR LIMITATION.—Subparagraph  
 20 (A) shall apply to a qualified distributee only in  
 21 the first 5 taxable years in which the qualified  
 22 distributee receives lifetime annuity payments  
 23 for the entire taxable year. For purposes of this  
 24 subparagraph, all lifetime annuity payments re-  
 25 ceived by a qualified distributee shall be taken

1 into account to the extent that such payments  
2 are subject to this paragraph or to the rules of  
3 section 101(d)(4).

4 “(C) INVESTMENT IN THE CONTRACT.—

5 For purposes of this section, the investment in  
6 the contract shall be determined without regard  
7 to this paragraph (5).

8 “(D) LIMITATION.—

9 “(i) IN GENERAL.—With respect to  
10 any qualified distributee, subparagraph (A)  
11 shall not apply to any lifetime annuity pay-  
12 ment to the extent that the portion of such  
13 payment that is includible in income, when  
14 added to the portion of all previous and si-  
15 multaneous lifetime annuity payments that  
16 was included in gross income and that was  
17 paid to such qualified distributee during  
18 the taxable year, exceeds 50 percent of the  
19 applicable amount for such year under sec-  
20 tion 415(c)(1)(A). For purposes of the pre-  
21 ceding sentence, the portion of lifetime an-  
22 nuity payments includible in gross income  
23 shall be determined without regard to sub-  
24 paragraph (A).

1           “(ii) AGGREGATION RULE.—For pur-  
 2           poses of this subparagraph, all lifetime an-  
 3           nuity payments received by a qualified dis-  
 4           tributee shall be taken into account to the  
 5           extent that such payments are subject to  
 6           this paragraph or to the rules of section  
 7           101(d)(4).

8           “(E) PHASEOUT OF EXCLUSION.—

9           “(i) IN GENERAL.—In any taxable  
 10          year, the exclusion from gross income for  
 11          any qualified distributee under this para-  
 12          graph and under the rules of section  
 13          101(d)(4) shall not exceed the income-ad-  
 14          justed limit.

15          “(ii) INCOME-ADJUSTED LIMIT.—For  
 16          purposes of this subparagraph, the income-  
 17          adjusted limit shall be—

18               “(I) 10 percent of the limitation  
 19               described in subparagraph (D), re-  
 20               duced (but not below zero) by

21               “(II) the amount determined  
 22               under clause (iii).

23          “(iii) AMOUNT DETERMINED.—The  
 24          amount determined under this clause shall  
 25          be the amount which bears the same ratio



1 to the amount described in clause (ii)(I)  
2 as—

3 “(I) the excess of the taxpayer’s  
4 adjusted gross income for such tax-  
5 able year over the applicable dollar  
6 amount, bears to

7 “(II) \$15,000 (\$30,000 for a  
8 joint return).

9 “(iv) LIMITATION ON REDUCTION.—  
10 The income-adjusted limit shall not be re-  
11 duced below \$200 by clause (ii)(II) unless  
12 (without regard to this clause) such limit is  
13 reduced to zero.

14 “(v) ROUNDING RULE.—Any income  
15 adjusted limit determined under this sub-  
16 paragraph which is not a multiple of \$10  
17 shall be rounded to the next lowest mul-  
18 tiple of \$10.

19 “(vi) ADJUSTED GROSS INCOME.—For  
20 purposes of this subparagraph, adjusted  
21 gross income of any taxpayer shall be de-  
22 termined in the same manner as under sec-  
23 tion 219(g)(3) except that any amount in-  
24 cluded in income under section 408A(d)(3)  
25 shall not be taken into account.

1 “(vii) APPLICABLE DOLLAR LIMIT.—

2 For purposes of this subparagraph, the ap-  
3 plicable dollar amount is—

4 “(I) in the case of a taxpayer fil-  
5 ing a joint return, an amount equal to  
6 twice the amount in effect under sub-  
7 clause (II),

8 “(II) in the case of any other  
9 taxpayer (other than a married indi-  
10 vidual filing a separate return),  
11 \$60,000, and

12 “(III) in the case of a married  
13 individual filing a separate return,  
14 zero.

15 “(viii) SPECIAL RULE FOR MARRIED  
16 INDIVIDUALS FILING SEPARATELY AND  
17 LIVING APART.—Section 219(g)(4) shall  
18 apply for purposes of this subparagraph.

19 “(ix) COST-OF-LIVING ADJUST-  
20 MENT.—In the case of taxable years begin-  
21 ning after December 31, 2006, the Sec-  
22 retary shall adjust the \$60,000 amount in  
23 clause (vii)(II) at the same time and in the  
24 same manner as under section 415(d), ex-  
25 cept that the base period shall be the cal-

1           endar quarter beginning July 1, 2005, and  
2           any increase under this clause which is not  
3           a multiple of \$5,000 shall be rounded to  
4           the next lowest multiple of \$5,000.”.

5           (B) DEFINITIONS.—Section 72(c) of such  
6           Code is amended by adding at the end the fol-  
7           lowing new paragraphs:

8           “(5) LIFETIME ANNUITY PAYMENT.—

9           “(A) IN GENERAL.—For purposes of sub-  
10          section (b)(5), the term ‘lifetime annuity pay-  
11          ment’ means a distribution from an annuity  
12          contract (as defined in paragraph (7)) that is a  
13          part of a series of substantially equal periodic  
14          payments—

15               “(i) made not less frequently than an-  
16               nually over the life of the qualified dis-  
17               tributee or the joint lives of the qualified  
18               distributee and the qualified distributee’s  
19               designated beneficiary, and

20               “(ii) that would satisfy the require-  
21               ments of section 408(b)(3) if the annuity  
22               contract were treated as an individual re-  
23               tirement annuity.

24          “(B) EXCEPTIONS.—

1                   “(i) CERTAIN FLUCTUATING PAY-  
2                   MENTS.—Annuity payments shall not fail  
3                   to be treated as part of a series of substan-  
4                   tially equal periodic payments merely be-  
5                   cause the amount of the periodic payments  
6                   may vary in accordance with investment  
7                   experience, reallocations among investment  
8                   options, actuarial gains or losses, cost of  
9                   living indices, a constant percentage (not  
10                  less than zero) applied not less frequently  
11                  than annually, or similar fluctuating cri-  
12                  teria.

13                  “(ii) CERTAIN CHANGES IN THE MODE  
14                  OF PAYMENTS.—Annuity payments shall  
15                  not fail to be treated as part of a series of  
16                  substantially equal periodic payments  
17                  merely because the period between each  
18                  such payment is lengthened or shortened,  
19                  but only if at all times such period is no  
20                  longer than one year.

21                  “(iii) PERMITTED REDUCTIONS.—An-  
22                  nuity payments shall not fail to be treated  
23                  as part of a series of substantially equal  
24                  periodic payments merely because, in the  
25                  case of an annuity payable over the lives of

1 the qualified distributee and the qualified  
2 distributee's designated beneficiary, the  
3 amounts paid after the death of the quali-  
4 fied distributee or the qualified  
5 distributee's designated beneficiary are less  
6 than the amounts payable during their  
7 joint lives.

8 “(iv) CERTAIN CONTRACT BENE-  
9 FITS.—The availability of a commutation  
10 benefit or other feature permitting accel-  
11 eration of annuity payments (or modifica-  
12 tion of the period during which such a ben-  
13 efit is available), a minimum period of pay-  
14 ments certain, or a minimum amount to be  
15 paid in any event shall not affect the treat-  
16 ment of a distribution as a lifetime annuity  
17 payment.

18 “(v) ELIGIBLE RETIREMENT PLANS.—  
19 Payments from an eligible retirement plan  
20 (within the meaning of section 402(c)(8))  
21 shall not be treated as lifetime annuity  
22 payments.

23 “(6) QUALIFIED DISTRIBUTE.—

24 “(A) IN GENERAL.—For purposes of sub-  
25 section (b)(5), the term ‘qualified distributee’

1 means an annuitant, the surviving spouse of an  
2 annuitant, or an alternate payee of an annu-  
3 itant under the contract.

4 “(B) ALTERNATE PAYEE DEFINED.—For  
5 purposes of this paragraph, the term ‘alternate  
6 payee’ means any spouse or former spouse of  
7 an annuitant under the contract who is recog-  
8 nized by a domestic relations order as having a  
9 right to receive all, or a portion of, the benefits  
10 payable under the contract with respect to such  
11 annuitant. For purposes of the preceding sen-  
12 tence, the term ‘domestic relations order’ means  
13 any judgment, decree, or order (including ap-  
14 proval of a property settlement agreement) that  
15 relates to the provision of child support, ali-  
16 mony payments, or marital property rights to a  
17 spouse or former spouse of an annuitant under  
18 the contract and is made pursuant to a State  
19 domestic relations law (including community  
20 property law).

21 “(7) ANNUITY CONTRACT.—For purposes of  
22 subsections (b)(5), (c)(5), and (x), the term ‘annuity  
23 contract’—

1           “(A) means a commercial annuity within  
 2           the meaning of section 3405(e)(6), other than  
 3           an endowment or life insurance contract, and

4           “(B) does not include any annuity contract  
 5           that is a qualified funding asset (as defined in  
 6           section 130(d)), but without regard to whether  
 7           there is a qualified assignment.”.

8           (C) RECAPTURE TAX.—Section 72 of such  
 9           Code is amended by redesignating subsection  
 10          (x) as subsection (y) and inserting after sub-  
 11          section (w) the following new subsection:

12       “(x) RECAPTURE TAX.—

13           “(1) IN GENERAL.—If—

14           “(A) an amount is not includible in gross  
 15           income by reason of subsection (b)(5) (relating  
 16           to lifetime annuity payments), and

17           “(B) the series of payments of which such  
 18           payment is a part is subsequently modified  
 19           (other than by reason of death or disability) so  
 20           that some or all future payments are not life-  
 21           time annuity payments,

22       the qualified distributee’s gross income for the first  
 23       taxable year in which such modification occurs shall  
 24       be increased by an amount, determined under rules  
 25       prescribed by the Secretary, equal to the amount

1       which (but for subsection (b)(5)) would have been  
 2       includible in the qualified distributee's gross income  
 3       if the modification had been in effect at all times,  
 4       plus interest for the deferral period at the under-  
 5       payment rate established under section 6621.

6               “(2) DEFERRAL PERIOD.—For purposes of this  
 7       subparagraph, the term ‘deferral period’ means the  
 8       period beginning with the taxable year in which  
 9       (without regard to subsection (b)(5)) the payment  
 10      would have been includible in gross income and end-  
 11      ing with the taxable year in which the modification  
 12      described in paragraph (1) occurs.”.

13              (2) LIFE INSURANCE DEATH BENEFITS.—

14              (A) IN GENERAL.—Section 101(d) of such  
 15      Code (relating to life insurance proceeds) is  
 16      amended by adding at the end the following  
 17      new paragraph:

18              “(4) EXCLUSION FOR LIFETIME ANNUITY PAY-  
 19      MENTS.—

20              “(A) IN GENERAL.—In the case of  
 21      amounts to which this subsection applies, gross  
 22      income shall not include 10 percent of the  
 23      amount otherwise includible in gross income  
 24      (determined without regard to this paragraph).



“(B) RULES OF SECTION 72(b)(5) TO APPLY.—For purposes of this paragraph, rules similar to the rules of section 72(b)(5) and section 72(x) shall apply, substituting the term ‘beneficiary of the life insurance contract’ for the term ‘annuitant’ wherever it appears, and substituting the term ‘life insurance contract’ for the term ‘annuity contract’ wherever it appears.”.

(B) CONFORMING AMENDMENT.—Section 101(d)(1) of such Code is amended by adding “or paragraph (4) of this subsection” following “to the extent not excluded by the preceding sentence”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to distributions made after December 31, 2005.

**SEC. 209. INCREASING PARTICIPATION THROUGH AUTOMATIC CONTRIBUTION ARRANGEMENTS.**

(a) IN GENERAL.—Section 401(k) of the Internal Revenue Code of 1986 (relating to cash or deferred arrangement) is amended by adding at the end the following new paragraph:

“(13) NONDISCRIMINATION REQUIREMENTS FOR AUTOMATIC CONTRIBUTION TRUSTS.—

1           “(A) IN GENERAL.—A cash or deferred ar-  
 2           rangement shall be treated as meeting the re-  
 3           quirements of paragraph (3)(A)(ii) if such ar-  
 4           rangement constitutes an automatic contribu-  
 5           tion trust.

6           “(B) AUTOMATIC CONTRIBUTION TRUST.—

7                   “(i) For purposes of this paragraph,  
 8           the term ‘automatic contribution trust’  
 9           means an arrangement—

10                   “(I) under which each employee  
 11           eligible to participate in the arrange-  
 12           ment is treated as having elected to  
 13           have the employer make elective con-  
 14           tributions in an amount equal to the  
 15           applicable percentage of compensation  
 16           until the employee affirmatively elects  
 17           not to have such contributions made  
 18           or affirmatively elects to make elective  
 19           contributions at a specified level, and

20                   “(II) which meets the other re-  
 21           quirements of this paragraph.

22           Subclause (I) of this clause shall not apply  
 23           to any employee who was eligible to par-  
 24           ticipate in the arrangement (or a prede-  
 25           cessor arrangement) immediately before

1 the first date on which the arrangement is  
2 an automatic contribution trust. The elec-  
3 tion treated as having been made under  
4 subclause (I) shall cease to apply to com-  
5 pensation paid after the effective date of  
6 the affirmative election by the employee.

7 “(ii) For purposes of this subpara-  
8 graph, with respect to an employee, the  
9 term ‘applicable percentage’ means the  
10 percentage determined under the arrange-  
11 ment that is—

12 “(I) at least 3 percent as of the  
13 first date that the election described  
14 in clause (i)(I) is in effect with re-  
15 spect to the employee,

16 “(II) at least 4 percent by a date  
17 that is not later than the first day of  
18 the second plan year beginning after  
19 the date described in subclause (I),

20 “(III) at least 5 percent by a  
21 date that is not later than the first  
22 day of the third plan year beginning  
23 after the date described in subclause  
24 (I),

1 “(IV) at least 6 percent by a  
2 date that is no later than the first day  
3 of the fourth plan year beginning  
4 after the date described in subclause  
5 (I),

6 “(V) at least 7 percent by a date  
7 that is not later than the first day of  
8 the fifth plan year beginning after the  
9 date described in subclause (I),

10 “(VI) at least 8 percent by a  
11 date that is no later than the first day  
12 of the sixth plan year beginning after  
13 the date described in subclause (I),  
14 and

15 “(VII) applied uniformly with re-  
16 spect to similarly situated employees.

17 “(C) PARTICIPATION.—

18 “(i) Except as provided in clause (ii),  
19 an arrangement meets the requirements of  
20 this subparagraph for any year if, during  
21 the plan year or the preceding plan year,  
22 elective contributions are made on behalf  
23 of at least 70 percent of the employees eli-  
24 gible to participate in the arrangement  
25 other than—

1                   “(I) highly compensated employ-  
2                   ees, and

3                   “(II) employees who were eligible  
4                   to participate in the arrangement (or  
5                   a predecessor arrangement) imme-  
6                   diately before the first date on which  
7                   the arrangement is an automatic con-  
8                   tribution trust.

9                   “(ii) An arrangement (other than a  
10                  successor arrangement) shall be treated as  
11                  meeting the requirements of this subpara-  
12                  graph with respect to the first plan year in  
13                  which the arrangement is effective.

14                  “(D) MATCHING OR NONELECTIVE CON-  
15                  TRIBUTIONS.—

16                  “(i) IN GENERAL.—The requirements  
17                  of this subparagraph are met if, under the  
18                  arrangement, the employer—

19                  “(I) makes matching contribu-  
20                  tions on behalf of each employee who  
21                  is not a highly compensated employee  
22                  in an amount equal to 50 percent of  
23                  the elective contributions of the em-  
24                  ployee to the extent such elective con-

1                   tributions do not exceed 6 percent of  
2                   compensation, or

3                   “(II) is required, without regard  
4                   to whether the employee makes an  
5                   elective contribution or employee con-  
6                   tribution, to make a contribution to a  
7                   defined contribution plan on behalf of  
8                   each employee who is not a highly  
9                   compensated employee and who is eli-  
10                  gible to participate in the arrange-  
11                  ment in an amount equal to at least  
12                  2 percent of the employee’s compensa-  
13                  tion.

14                The rules of clauses (ii) and (iii) of paragraph  
15                (12)(B) shall apply for purposes of subclause  
16                (I). The rules of clause (ii) of paragraph  
17                (12)(E) shall apply for purposes of subclauses  
18                (I) and (II).

19                “(ii) OTHER PLANS.—An arrange-  
20                ment shall be treated as meeting the re-  
21                quirements under clause (i) if any other  
22                plan maintained by the employer meets  
23                such requirements with respect to employ-  
24                ees eligible under the arrangement.

1           “(E) VESTING.—The requirements of this  
2           subparagraph are met if an employee who has  
3           completed at least 2 years of service (within the  
4           meaning of section 411(a)) has a nonforfeitable  
5           right to 100 percent of the employee’s accrued  
6           benefit derived from employer contributions  
7           taken into account in determining whether the  
8           requirements of subparagraph (D) are met.

9           “(F) NOTICE REQUIREMENTS.—

10           “(i) IN GENERAL.—The requirements  
11           of this subparagraph are met if the re-  
12           quirements of clauses (ii) and (iii) are met.

13           “(ii) REASONABLE PERIOD TO MAKE  
14           ELECTION.—The requirements of this  
15           clause are met if each employee to whom  
16           subparagraph (B)(i) applies—

17           “(I) receives a notice explaining  
18           the employee’s right under the ar-  
19           rangement to elect not to have elective  
20           contributions made on the employee’s  
21           behalf and how contributions made  
22           under the arrangement will be in-  
23           vested in the absence of any invest-  
24           ment election by the employee, and

1                   “(II) has a reasonable period of  
 2                   time after receipt of such notice and  
 3                   before the first elective contribution is  
 4                   made to make either such election.

5                   “(iii) ANNUAL NOTICE OF RIGHTS  
 6                   AND OBLIGATIONS.—The requirements of  
 7                   this clause are met if each employee eligi-  
 8                   ble to participate in the arrangement is,  
 9                   within a reasonable period before any year,  
 10                  given notice of the employee’s rights and  
 11                  obligations under the arrangement.

12                  The requirements of clauses (i) and (ii) of para-  
 13                  graph (12)(D) shall be met with respect to the  
 14                  notices described in clauses (ii) and (iii) of this  
 15                  subparagraph.”.

16                  (b) MATCHING CONTRIBUTIONS.—Section 401(m) of  
 17                  such Code (relating to nondiscrimination test for matching  
 18                  contributions and employee contributions) is amended by  
 19                  redesignating paragraph (12) as paragraph (13) and by  
 20                  inserting after paragraph (11) the following new para-  
 21                  graph:

22                         “(12) ALTERNATIVE METHOD FOR AUTOMATIC  
 23                         CONTRIBUTION TRUSTS.—

24                                 “(A) IN GENERAL.—A defined contribution  
 25                                 plan shall be treated as meeting the require-



1           ments of paragraph (2) with respect to match-  
2           ing contributions if the plan—

3                   “(i) meets the contribution require-  
4                   ments of subparagraphs (B)(i) and (D) of  
5                   subsection (k)(13),

6                   “(ii) meets the participation require-  
7                   ments of subsection (k)(13)(C),

8                   “(iii) meets the vesting and notice re-  
9                   quirements of subparagraphs (E) and (F)  
10                  of subsection (k)(13), and

11                  “(iv) meets the requirements of para-  
12                  graph (11)(B).

13                  “(B) MATCHING CONTRIBUTIONS.—An an-  
14                  nuity contract under section 403(b) shall be  
15                  treated as meeting the requirements of para-  
16                  graph (2) with respect to matching contribu-  
17                  tions if such contract meets requirements simi-  
18                  lar to the requirements under subparagraph  
19                  (A).”.

20           (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY  
21   PLANS.—

22                  (1) ELECTIVE CONTRIBUTION RULE.—Clause  
23                  (i) of section 416(g)(4)(H) of such Code is amended  
24                  by inserting “or 401(k)(13)” after “section  
25                  401(k)(12)”.

1           (2) MATCHING CONTRIBUTION RULE.—Clause  
 2           (ii) of section 416(g)(4)(H) of such Code is amended  
 3           by inserting “or 401(m)(12)” after “section  
 4           401(m)(11)”.

5           (d) DEFINITION OF COMPENSATION.—

6           (1) BASE PAY OR RATE OF PAY.—The Sec-  
 7           retary of the Treasury shall, by no later than De-  
 8           cember 31, 2006, modify Treasury Regulation sec-  
 9           tion 1.414(s)–1(d)(3) to facilitate the use of the safe  
 10          harbors in sections 401(k)(12), 401(k)(13),  
 11          401(m)(11), and 401(m)(12) of the Internal Rev-  
 12          enue Code of 1986, and in Treasury Regulation sec-  
 13          tion 1.401(a)(4)–3(b) by plans that use base pay or  
 14          rate of pay in determining contributions or benefits.  
 15          Such facilitation shall include increased flexibility in  
 16          satisfying section 414(s) of such Code in situations  
 17          where the amount of overtime compensation payable  
 18          in a year can vary significantly.

19          (2) APPLICATION OF REQUIREMENTS TO SEPA-  
 20          RATE PAYROLL PERIODS.—Not later than December  
 21          31, 2005, the Secretary of the Treasury shall issue  
 22          rules under subparagraphs (B)(i) and (D)(i) of sec-  
 23          tion 401(k)(13) of such Code and under clause (i)  
 24          of section 401(m)(12)(A) of such Code that, effec-  
 25          tive for plan years beginning after December 31,

1       2005, permit such requirements to be applied sepa-  
 2       rately to separate payroll periods based on rules  
 3       similar to the rules described in Treasury Regulation  
 4       sections 1.401(k)–3(c)(5)(ii) and 1.401(m)–3(d)(4).

5       (e) SECTION 403(b) CONTRACTS.—Paragraph (11) of  
 6       section 401(m) of such Code is amended by adding at the  
 7       end the following:

8               “(C) SECTION 403(b) CONTRACTS.—An  
 9               annuity contract under section 403(b) shall be  
 10              treated as meeting the requirements of para-  
 11              graph (2) with respect to matching contribu-  
 12              tions if such contract meets requirements simi-  
 13              lar to the requirements under subparagraph  
 14              (A).”.

15       (f) INVESTMENTS AND PREEMPTION.—

16              (1) CONTROL DEEMED TO HAVE BEEN EXER-  
 17              CISED WITH RESPECT TO AMOUNT OF AUTOMATIC  
 18              CONTRIBUTIONS.—Section 404(c) of the Employee  
 19              Retirement Income Security Act of 1974 (29 U.S.C.  
 20              1104(c)) (as amended by this Act) is amended by  
 21              adding at the end the following new paragraphs:

22              “(5)(A) A participant in an individual account plan  
 23              shall, for purposes of paragraph (1), be treated as exer-  
 24              cising control over the assets in the account with respect

1 to the amount of contributions made under an automatic  
2 contribution arrangement.

3 “(B) For purposes this paragraph, the term ‘auto-  
4 matic contribution arrangement’ means an arrangement—

5 “(i) which meets the requirements of subpara-  
6 graph (C),

7 “(ii) under which a participant may elect to  
8 have the employer make payments as contributions  
9 under the plan on behalf of the participant, or to the  
10 participant directly in cash,

11 “(iii) under which the participant is treated as  
12 having elected to have the employer make such con-  
13 tributions in an amount equal to a specified percent-  
14 age of compensation provided under the plan until  
15 the participant affirmatively elects not to have such  
16 contributions made (or affirmatively elects to have  
17 such contributions made at a different percentage),  
18 and

19 “(iv) under which contributions described in  
20 clause (iii) are invested in accordance with regula-  
21 tions prescribed by the Secretary, which regulations  
22 shall provide for the investment of the contributions  
23 in one or more diversified funds that include invest-  
24 ments that provide long-term capital appreciation  
25 and investments that provide preservation of capital.

1       “(C)(i) The administrator of an individual account  
2 plan shall, within a reasonable period before each plan  
3 year, give to each employee to whom an automatic con-  
4 tribution arrangement applies for such plan year notice  
5 of the employee’s rights and obligations under the ar-  
6 rangement which—

7               “(I) is sufficiently accurate and comprehensive  
8 to apprise the employee of such rights and obliga-  
9 tions, and

10              “(II) is written in a manner calculated to be  
11 understood by the average employee to whom the ar-  
12 rangement applies.

13       “(ii) A notice shall not be treated as meeting the re-  
14 quirements of clause (i) with respect to an employee un-  
15 less—

16              “(I) the notice includes a notice explaining the  
17 employee’s right under the arrangement to elect not  
18 to have elective contributions made on the employ-  
19 ee’s behalf (or to elect to have such contributions  
20 made at a different percentage),

21              “(II) the notice explains how contributions  
22 made under the arrangement will be invested in the  
23 absence of any investment election by the employee,  
24 and

1           “(III) the employee has a reasonable period of  
 2           time after receipt of the notice described in sub-  
 3           clauses (I) and (II) and before the first elective con-  
 4           tribution is made to make either such election.

5           “(6)(A) A participant in an individual account plan  
 6           shall, for purposes of paragraph (1), be treated as exer-  
 7           cising control over the assets in the account with respect  
 8           to contributions described in subparagraph (B).

9           “(B) Contributions are described in this subpara-  
 10          graph (B) if—

11           “(i) such contributions are not described in  
 12          paragraph (5),

13           “(ii) the administrator of the plan satisfies  
 14          rules similar to the rules of paragraph (5)(C) (ex-  
 15          cept that the notice shall relate to the employee’s  
 16          right to make a different investment election), and

17           “(iii) such contributions are invested pursuant  
 18          to the regulations under paragraph (5)(B)(iv).”.

19           (2) PREEMPTION OF CONFLICTING STATE REG-  
 20          ULATION.—Section 514(b) of such Act (29 U.S.C.  
 21          1144(b)) is amended—

22           (A) by redesignating paragraph (9) as  
 23          paragraph (10); and

24           (B) by inserting after paragraph (8) the  
 25          following new paragraph:

1       “(9) Notwithstanding any other provision of this sec-  
 2 tion, any law of a State which would directly or indirectly  
 3 prohibit or restrict the inclusion in any plan of an auto-  
 4 matic contribution arrangement (as defined in section  
 5 404(c)(5)(B)) shall be superseded. The Secretary may  
 6 prescribe regulations which would establish minimum  
 7 standards that such arrangements would be required to  
 8 satisfy in order for this paragraph to apply.”.

9       (g) CORRECTIVE DISTRIBUTIONS.—

10           (1) IN GENERAL.—Section 414 of the Internal  
 11 Revenue Code of 1986 (relating to definitions and  
 12 special rules) is amended by adding at the end the  
 13 following new subsection:

14       “(bb)   AUTOMATIC   CONTRIBUTION   ARRANGE-  
 15 MENTS.—

16           “(1) IN GENERAL.—For purposes of this title,  
 17 the amount of any corrective distribution from a  
 18 plan shall be treated as if such amount had never  
 19 been held in such plan and shall be treated as a pay-  
 20 ment of compensation from the employer maintain-  
 21 ing the plan to the employee receiving such distribu-  
 22 tion.

23           “(2) CORRECTIVE DISTRIBUTION.—For pur-  
 24 poses of this subsection, the term ‘corrective dis-  
 25 tribution’ means a distribution from an applicable

1 employer plan of all amounts attributable to an erro-  
2 neous automatic contribution.

3 “(3) ERRONEOUS AUTOMATIC CONTRIBU-  
4 TION.—For purposes of this subsection, the term  
5 ‘erroneous automatic contribution’ means an elective  
6 contribution made on behalf of an employee under  
7 any applicable employer plan pursuant to a plan pro-  
8 vision treating the employee as having elected to  
9 have the employer make such elective contribution  
10 until the employee affirmatively elects not to have  
11 such contribution made or affirmatively elects to  
12 make contributions at a specified level, if the fol-  
13 lowing requirements are satisfied—

14 “(A) within the applicable period, the em-  
15 ployee notifies the plan administrator that the  
16 employee elects to have the elective contribution  
17 treated as an erroneous automatic contribution,  
18 and

19 “(B) the sum of the elective contributions  
20 that are treated as erroneous automatic con-  
21 tributions with respect to an employee does not  
22 exceed \$500.

23 “(4) APPLICABLE EMPLOYER PLAN.—For pur-  
24 poses of this subsection, the term ‘applicable em-  
25 ployer plan’ has the meaning described in subsection



(v)(6)(A) except that the term shall not include an eligible deferred compensation plan maintained by an eligible employer described in section 457(e)(1)(B).

“(5) APPLICABLE PERIOD.—For purposes of this subsection, with respect to an employee, the term ‘applicable period’ means the three month period that begins on the first date that an amount is withheld from compensation payable to the employee in order to make a plan contribution pursuant to a plan provision described in paragraph (3).”.

(2) VESTING CONFORMING AMENDMENTS.—

(A) INTERNAL REVENUE CODE OF 1986.—

(i) Section 411(a)(3)(G) of such Code is amended by inserting “an erroneous automatic contribution under section 414(bb),” after “402(g)(2)(A),”.

(ii) The heading of section 411(a)(3)(G) of such Code is amended by inserting “OR ERRONEOUS AUTOMATIC CONTRIBUTION” before the period.

(iii) Section 401(k)(8)(E) of such Code is amended by inserting “an erroneous automatic contribution under section 414(bb),” after “402(g)(2)(A),”.

1                   (iv) The heading of section  
 2                   401(k)(8)(E) of such Code is amended by  
 3                   inserting “OR ERRONEOUS AUTOMATIC  
 4                   CONTRIBUTION” before the period.

5                   (B) EMPLOYEE RETIREMENT INCOME SE-  
 6                   CURITY ACT OF 1974.—Section 203(a)(3)(F) of  
 7                   the Employee Retirement Income Security Act  
 8                   of 1974 (29 U.S.C. 1053(a)(3)(F)) is amended  
 9                   by inserting “an erroneous automatic contribu-  
 10                  tion under section 414(bb) of such Code,” after  
 11                  “402(g)(2)(A) of such Code,”.

12               (h) EFFECTIVE DATE.—

13               (1) IN GENERAL.—Except as provided by para-  
 14               graph (2), the amendments made by this section  
 15               shall apply to plan years beginning after December  
 16               31, 2005.

17               (2) SECTION 403(b) CONTRACTS.—The amend-  
 18               ments made by subsection (e) shall apply to years  
 19               beginning after December 31, 1998.

20               (3) REGULATIONS.—Final regulations under  
 21               section 404(c)(5)(B)(iv) of the Employee Retirement  
 22               Income Security Act of 1974 (added by this section)  
 23               shall be issued no later than 6 months after the date  
 24               of enactment of this Act.

1 **SEC. 210. FACILITATING LONGEVITY INSURANCE.**

2 (a) IN GENERAL.—Paragraph (9) of section 401(a)  
3 of the Internal Revenue Code of 1986, as amended by this  
4 Act, is amended by inserting after subparagraph (H) the  
5 following new subparagraph:

6 “(I) LONGEVITY INSURANCE.—

7 “(i) IN GENERAL.—For purposes of  
8 this paragraph, any value attributable to  
9 longevity insurance shall be disregarded in  
10 determining the value of an employee’s in-  
11 terest under a plan prior to the first date  
12 that payments are made under the lon-  
13 gevity insurance.

14 “(ii) LONGEVITY INSURANCE DE-  
15 FINED.—For purposes of this subpara-  
16 graph, the term ‘longevity insurance’  
17 means an annuity payable on behalf of the  
18 employee under which—

19 “(I) payments commence not  
20 later than 12 months following the  
21 calendar month in which the employee  
22 attains age 85 (or would have at-  
23 tained age 85),

24 “(II) payments are made in sub-  
25 stantially equal periodic payments  
26 (not less frequently than annually)

1 over the life of the employee or the  
2 joint lives of the employee and the  
3 employee's designated beneficiary,  
4 taking into account the rules of clause  
5 (i)(II) of section 402(e)(7)(D), except  
6 as otherwise provided in subclause  
7 (III),

8 “(III) prior to the death of the  
9 employee, the annuity does not make  
10 available any commutation benefit,  
11 cash surrender value, or other similar  
12 feature, and

13 “(IV) except as provided in rules  
14 prescribed by the Secretary, in the  
15 case of an employee's death prior to  
16 the date that payments commence, the  
17 value of any death benefits paid may  
18 not exceed the premiums paid for  
19 such annuity, plus interest com-  
20 pounded annually at 3 percent.

21 “(iii) ADJUSTING AGE.—For purposes  
22 of clause (ii)(I), the Secretary shall annu-  
23 ally increase age 85 to reflect increases in  
24 life expectancy (as determined by the Sec-  
25 retary) that occur on or after January 1,

1           2006, except that any such increased age  
 2           which is not a whole number shall be  
 3           rounded to the next lower whole number.”.

4           (b) RULES.—Not later than one year after the date  
 5 of enactment of this Act, the Secretary of the Treasury  
 6 shall prescribe rules under which all or a portion of a par-  
 7 ticipant’s benefits under any plan described in section  
 8 402(c)(8)(B) of the Internal Revenue Code of 1986 may  
 9 be treated as longevity insurance under the rules of section  
 10 401(a)(9)(I) of such Code.

11          (c) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to years beginning after December  
 13 31, 2006.

14 **SEC. 211. DIRECT PAYMENT OF TAX REFUNDS TO INDIVIDUAL RETIREMENT PLANS.**

16          (a) IN GENERAL.—Paragraph (3) of section 219(f)  
 17 of the Internal Revenue Code of 1986 is amended to read  
 18 as follows:

19           “(3) TIME WHEN CONTRIBUTIONS MADE.—

20           “(A) IN GENERAL.—Except as provided in  
 21 subparagraph (B), for purposes of this sub-  
 22 section, a taxpayer shall be deemed to have  
 23 made a contribution to an individual retirement  
 24 plan on the last day of the preceding taxable  
 25 year if the contribution is made on account of

1 such taxable year and is made not later than  
2 the time prescribed by law for filing the return  
3 for such taxable year (not including extensions  
4 thereof).

5 “(B) DIRECT PAYMENT OF TAX REFUNDS  
6 TO INDIVIDUAL RETIREMENT PLANS.—

7 “(i) IN GENERAL.—To the extent pro-  
8 vided in rules prescribed by the Secretary,  
9 a tax refund owed to a taxpayer and paid  
10 directly to an individual retirement plan  
11 shall be deemed a contribution made by  
12 the taxpayer—

13 “(I) on the last day of the tax-  
14 able year to which such refund re-  
15 lates, and

16 “(II) on account of the taxable  
17 year to which such refund relates.

18 “(ii) LIMITATION.—This subpara-  
19 graph (B) shall not apply to a tax refund  
20 unless such refund is shown on a return  
21 filed not later than the time prescribed by  
22 law for filing the return for the taxable  
23 year to which such refund relates (not in-  
24 cluding extensions thereof).

1           “(iii) DIRECT PAYMENT.—For pur-  
 2           poses of this subparagraph, a tax refund is  
 3           paid directly to an individual retirement  
 4           plan if it is paid in the form of a direct  
 5           transfer from the Secretary to the trustee  
 6           or issuer of the individual retirement plan.

7           “(iv) TAX REFUND.—For purposes of  
 8           this subparagraph, the term ‘tax refund’  
 9           means a refund of an internal revenue tax  
 10          or credit.”.

11       (b) REGULATIONS.—

12           (1) IN GENERAL.—Not later than 1 year after  
 13          the date of enactment of this Act, the Secretary of  
 14          the Treasury shall issue rules which permit a tax-  
 15          payer—

16                (A) to elect to have all or any portion of  
 17                a tax refund owed to the taxpayer paid directly  
 18                to an RSA, or, if the Secretary determines that  
 19                such direct payments are reasonably admin-  
 20                istrable, to individual retirement plans which  
 21                are not RSAs,

22                (B) to specify the individual retirement  
 23                plan to which such tax refund is to be paid  
 24                (and the investment option in which such tax  
 25                refund is to be invested), and

1 (C) to the extent provided in rules pre-  
2 scribed by the Secretary, to specify the taxable  
3 year on account of which such payment is  
4 made,

5 except that the Secretary may require that the  
6 amount subject to such an election exceed a dollar  
7 threshold determined by the Secretary as necessary  
8 or appropriate to ensure the administrability of such  
9 elections.

10 (2) INFORMATION.—The Secretary may require  
11 that the taxpayer provide, and agree to the disclo-  
12 sure of, any information necessary to pay the tax re-  
13 fund to the individual retirement plan specified by  
14 the taxpayer.

15 (3) SPECIAL RULE.—The Secretary may pro-  
16 vide that if, for any reason, the trustee or issuer  
17 does not accept payment of a tax refund, the tax re-  
18 fund shall instead be paid as if the taxpayer had not  
19 elected a direct payment to an individual retirement  
20 plan.

21 (c) CONFORMING AMENDMENTS.—

22 (1) Paragraph (3) of section 408(o) of the In-  
23 ternal Revenue Code of 1986 is amended by striking  
24 “rule” and inserting “rules”.



1           (2) Paragraph (7) of section 408A(c) of such  
2       Code is amended by striking “rule” and inserting  
3       “rules”.

4       (d) EFFECTIVE DATE.—The amendments made by  
5       this section shall be effective for tax returns filed after  
6       final rules implementing the amendments made by this  
7       section are prescribed.

8       **SEC. 212. TREATMENT OF QUALIFIED RETIREMENT PLAN-**  
9                                   **NING SERVICES.**

10       (a) IN GENERAL.—Subsection (m) of section 132 of  
11       the Internal Revenue Code of 1986 (defining qualified re-  
12       tirement services) is amended by adding at the end the  
13       following new paragraph:

14               “(4) NO CONSTRUCTIVE RECEIPT.—No amount  
15       shall be included in the gross income of any em-  
16       ployee solely because the employee may choose be-  
17       tween any qualified retirement planning services pro-  
18       vided by a qualified investment advisor and com-  
19       pensation which would otherwise be includible in the  
20       gross income of such employee. The preceding sen-  
21       tence shall apply to highly compensated employees  
22       only if the choice described in such sentence is avail-  
23       able on substantially the same terms to each mem-  
24       ber of the group of employees normally provided

1 education and information regarding the employer's  
2 qualified employer plan.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 403(b)(3)(B) of such Code is  
5 amended by inserting “132(m)(4),” after  
6 “132(f)(4),”.

7 (2) Section 414(s)(2) of such Code is amended  
8 by inserting “132(m)(4),” after “132(f)(4),”.

9 (3) Section 415(c)(3)(D)(ii) of such Code is  
10 amended by inserting “132(m)(4),” after  
11 “132(f)(4),”.

12 (c) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to taxable years beginning after  
14 December 31, 2005.

15 **SEC. 213. REPEAL OF COMBINED PLAN DEDUCTION LIMIT.**

16 (a) IN GENERAL.—Paragraph (7) of section 404(a)  
17 of the Internal Revenue Code of 1986 (relating to limita-  
18 tions on deductions where combination of defined con-  
19 tribution plan and defined benefit plan) is amended by  
20 adding at the end the following:

21 “(D) EXEMPTION.—This paragraph shall  
22 not apply to contributions by any employer if  
23 such employer or any member of such employ-  
24 er's controlled group (within the meaning of  
25 section 412(l)(8)(C)) maintains a defined ben-

1           efit plan that is covered by title IV of the Em-  
 2           ployee Retirement Income Security Act of  
 3           1974.”.

4           (b) EFFECTIVE DATE.—The amendment made by  
 5 this section shall apply to contributions for taxable years  
 6 beginning after December 31, 2005.

7 **TITLE III—EXPANDING SMALL**  
 8 **BUSINESS RETIREMENT PLAN**  
 9 **COVERAGE AND MAKING THE**  
 10 **ELECTIVE DEFERRAL RULES**  
 11 **SIMPLER AND MORE UNI-**  
 12 **FORM**

13 **SEC. 301. ALLOW ADDITIONAL NONELECTIVE CONTRIBU-**  
 14 **TIONS TO SIMPLE PLANS.**

15           (a) IN GENERAL.—

16           (1) MODIFICATION TO DEFINITION.—Subpara-  
 17 graph (A) of section 408(p)(2) of the Internal Rev-  
 18 enue Code of 1986 (defining qualified salary reduc-  
 19 tion arrangement) is amended by striking “and” at  
 20 the end of clause (iii), by redesignating clause (iv)  
 21 as clause (v), and by inserting after clause (iii) the  
 22 following new clause:

23                           “(iv) the employer may make nonelec-  
 24                           tive contributions of a uniform percentage  
 25                           (up to 10 percent) of compensation for

1           each employee who is eligible to participate  
 2           in the arrangement and who has at least  
 3           \$5,000 of compensation from the employer  
 4           for the year, and”.

5           (2) LIMITATION.—Subparagraph (A) of section  
 6           408(p)(2) of such Code (defining qualified salary re-  
 7           duction arrangement) is amended by adding at the  
 8           end the following: “The compensation taken into ac-  
 9           count under clause (iv) for any year shall not exceed  
 10          the limitation in effect for such year under section  
 11          401(a)(17).”.

12          (b) CONFORMING AMENDMENTS.—

13           (1) Section 408(p)(2)(A)(v) of such Code, as re-  
 14           designated by subsection (a), is amended by striking  
 15           “or (iii)” and inserting “, (iii), or (iv)”.

16           (2) Paragraph (8) of section 408(p) of such  
 17           Code is amended by inserting “, the employer con-  
 18           tribution actually made under paragraph (2)(A)(iv)  
 19           of this subsection,” after “paragraph (2)(A)(ii) of  
 20           this subsection”.

21           (3) Section 401(k)(11)(B)(i) of such Code is  
 22           amended by striking “and” at the end of subclause  
 23           (II), by redesignating subclause (III) as subclause  
 24           (IV), and by inserting after subclause (II) the fol-  
 25           lowing new subclause:

1                   “(III) the employer may make  
 2                   nonelective contributions of a uniform  
 3                   percentage (up to 10 percent) of com-  
 4                   pensation for each employee who is el-  
 5                   igible to participate in the arrange-  
 6                   ment and who has at least \$5,000 of  
 7                   compensation from the employer for  
 8                   the year, and”

9                   (4) Section 401(k)(11)(B)(i)(IV) of such Code,  
 10                  as redesignated by paragraph (2), is amended by  
 11                  striking “or (II)” and inserting “, (II), or (III)”.

12                  (c) EFFECTIVE DATE.—The amendments made by  
 13                  this section shall apply to years beginning after December  
 14                  31, 2005.

15       **SEC. 302. CONFORM MATCHING CONTRIBUTION RULES FOR**  
 16                               **SIMPLE IRAS AND SIMPLE 401(k)S.**

17                  (a) IN GENERAL.—Subclause (II) of section  
 18                  401(k)(11)(B)(i) of the Internal Revenue Code of 1986  
 19                  (relating to general rule for contribution requirements) is  
 20                  amended by striking “3 percent” and inserting “the appli-  
 21                  cable percentage (as defined in section 408(p)(2)(C)(ii))”.

22                  (b) EFFECTIVE DATE.—The amendment made by  
 23                  this section shall apply to years beginning after December  
 24                  31, 2005.

1 **SEC. 303. UNIFORM CATCH-UP CONTRIBUTION RULE.**

2 (a) IN GENERAL.—Clause (iii) of section  
3 414(v)(6)(A) of the Internal Revenue Code of 1986 is  
4 amended to read as follows:

5 “(iii) an eligible deferred compensa-  
6 tion plan (as defined in section 457(b)),  
7 and”.

8 (b) CONFORMING AMENDMENT.—Paragraph (18) of  
9 section 457(e) of such Code is amended by striking “and  
10 who is a participant in an eligible deferred compensation  
11 plan of an employer described in paragraph (1)(A)”.

12 (c) EFFECTIVE DATE.—The amendments made by  
13 this section shall apply to years beginning after December  
14 31, 2005.

15 **SEC. 304. UNIFORM DEFINITION OF COMPENSATION.**

16 (a) COMPENSATION.—

17 (1) IN GENERAL.—Subparagraph (A) of section  
18 415(c)(3) of the Internal Revenue Code of 1986 is  
19 amended to read as follows:

20 “(A) IN GENERAL.—The term ‘partici-  
21 pant’s compensation’ means wages (as defined  
22 by section 3401(a)) and all other payments of  
23 compensation to an employee by his employer  
24 (in the course of the employer’s trade or busi-  
25 ness) for the year for which the employer is re-  
26 quired to furnish the employee a written state-

ment under section 6041(d), 6051(a)(3), or 6052. In accordance with rules prescribed by the Secretary, compensation shall be determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed.”.

(2) CERTAIN PICKED UP CONTRIBUTIONS.—

Subparagraph (D) of section 415(c)(3) of such Code is amended by striking “and” at the end of clause (i), redesignating clause (ii) as clause (iii), and inserting after clause (i) the following:

“(ii) any employee contributions that are picked up under section 414(h)(2), and”.

(3) FIVE-YEAR RULE.—Subparagraph (E) of section 415(c)(3) of such Code is amended to read as follows:

“(E) FIVE-YEAR RULE.—In the case of an annuity contract described in section 403(b), at the election of the employer maintaining the arrangement, the term ‘participant’s compensation’ shall not be determined for the year but shall be determined for the most recent period (ending not later than the close of the year)

1           which constitutes a year of service and which  
2           precedes the year by no more than five years.  
3           For purposes of the preceding sentence, under  
4           rules prescribed by the Secretary, a year of  
5           service shall be a full year of full-time service  
6           as an employee (or a combination of more than  
7           one year of part-year or part-time service).”.

8           (4) APPLICABILITY.—Paragraph (3) of section  
9           415(c) of such Code is amended by striking “For  
10          purposes of paragraph (1)—” and inserting “For  
11          purposes of this section—”.

12          (b) 403(b) PLANS.—

13               (1) IN GENERAL.—Subsection (b) of section  
14               403 of such Code is amended by striking paragraphs  
15               (3) and (4).

16               (2) CONFORMING AMENDMENTS.—

17                       (A) Clauses (i) and (ii) of section  
18                       414(e)(5)(B) of such Code are amended to read  
19                       as follows:

20                               “(i) the minister’s compensation  
21                               under section 415(c)(3) shall be deter-  
22                               mined by reference to the minister’s earned  
23                               income (within the meaning of section  
24                               401(c)(2)) from such ministry rather than



1 the amount of compensation which is re-  
2 ceived from an employer, and

3 “(ii) the years (and portions of years)  
4 in which such minister was a self-employed  
5 individual (within the meaning of section  
6 401(c)(1)(B)) with respect to such min-  
7 istry shall be included for purposes of sec-  
8 tion 415(c)(3)(E).”.

9 (B) Paragraph (7) of section 414(u) of  
10 such Code is amended by striking “403(b)(3),  
11 415(c)(3),” and inserting “415(c)(3)”.

12 (C) Subparagraph (C) of section 415(c)(7)  
13 of such Code is amended by striking “includible  
14 compensation determined under section  
15 403(b)(3)” and inserting “compensation deter-  
16 mined under section 415(c)(3)”.

17 (c) SIMPLIFIED EMPLOYEE PENSIONS.—Subpara-  
18 graph (A) of section 402(h)(2) of such Code is amended  
19 to read as follows:

20 “(A) 25 percent of the compensation (with-  
21 in the meaning of section 415(c)(3), except that  
22 for purposes of this subsection, amounts de-  
23 scribed in section 6051(a)(3) shall be deter-  
24 mined without regard to section 3401(a)(3))  
25 from such employer for the year, or”.

1 (d) SIMPLE PLANS.—Subparagraph (A) of section  
 2 408(p)(6) of such Code is amended to read as follows:

3 “(A) COMPENSATION.—The term ‘com-  
 4 pensation’ has the same meaning as the term  
 5 ‘participant’s compensation’ (as defined in sec-  
 6 tion 415(c)(3)), except that for purposes of this  
 7 subsection, amounts described in section  
 8 6051(a)(3) shall be determined without regard  
 9 to section 3401(a)(3).”.

10 (e) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to years beginning after December  
 12 31, 2005.

13 **SEC. 305. UNIFORM WITHDRAWAL RULES.**

14 (a) IN GENERAL.—Section 414 of the Internal Rev-  
 15 enue Code of 1986 is amended by adding at the end the  
 16 following:

17 “(w) DISTRIBUTABLE EVENT.—For purposes of this  
 18 part—

19 “(1) IN GENERAL.—The term ‘distributable  
 20 event’ means with respect to a participant—

21 “(A) attainment of age 59½,

22 “(B) death,

23 “(C) disability (within the meaning of sec-  
 24 tion 72(m)(7)),

25 “(D) severance from employment,

1 “(E) hardship, or

2 “(F) termination of the plan without the  
3 establishment or maintenance of a successor  
4 plan (other than an employee stock ownership  
5 plan as defined in section 4975(e)(7)).

6 “(2) SPECIAL RULES.—

7 “(A) Subparagraphs (A) and (E) of para-  
8 graph (1) shall not apply to a defined contribu-  
9 tion plan to which section 412 applies.

10 “(B) Paragraph (1)(E) shall only apply to  
11 amounts described in clauses (i) or (ii) of sec-  
12 tion 415(c)(3)(D) (without regard to earnings  
13 attributable to such amounts).

14 “(C) Paragraph (1)(F) shall not apply to  
15 a plan described in subsection (v)(6)(A)(ii) un-  
16 less the employer maintaining such plan elects  
17 to maintain the plan pursuant to a plan docu-  
18 ment. Under rules prescribed by the Secretary,  
19 a plan described in subsection (v)(6)(A)(ii) may  
20 be treated as terminated without regard to  
21 whether all assets of the plan are distributed.

22 “(D)(i) Paragraph (1)(F) shall not apply  
23 to an employee unless the employee receives a  
24 lump sum distribution by reason of the termi-  
25 nation.

1           “(ii) For purposes of this subparagraph,  
2           the determination of whether a distribution is a  
3           lump sum distribution shall be made under sec-  
4           tion 402(e)(4)(D) (without regard to subclauses  
5           (I), (II), (III), and (IV) of clause (i) thereof)  
6           or, in the case of plans not described in such  
7           section, under similar rules. Such term includes  
8           a distribution that consists in whole or in part  
9           of an annuity contract.”.

10       (b) 401(k) PLANS.—

11           (1) Clause (i) of section 401(k)(2)(B) of such  
12       Code is amended to read as follows:

13                   “(i) may not be distributable to par-  
14                   ticipants or other beneficiaries earlier than  
15                   the occurrence of a distributable event,  
16                   and”.

17           (2) Section 401(k) of such Code is amended by  
18       striking paragraph (10).

19           (3) The last sentence of subparagraph (C) of  
20       section 401(k)(7) of such Code is amended to read  
21       as follows: “For purposes of this section, the term  
22       ‘hardship distribution’ means a distribution de-  
23       scribed in section 414(w)(1)(E) (taking section  
24       414(w)(2)(B) into account but without regard to  
25       section 414(w)(2)(A)).

1 (c) 403(b) PLANS.—

2 (1) Clause (ii) of section 403(b)(7)(A) of such  
3 Code is amended to read as follows:

4 “(ii) under the custodial account, no  
5 such amounts may be paid or made avail-  
6 able to any distributee before the occur-  
7 rence of a distributable event.”.

8 (2) Paragraph (11) of section 403(b) of such  
9 Code is amended by striking “may be paid only”  
10 and all that follows and inserting “may be paid only  
11 upon the occurrence of a distributable event.”.

12 (d) ELIGIBLE DEFERRED COMPENSATION PLANS.—

13 (1) Subparagraph (A) of section 457(d)(1) of  
14 such Code is amended to read as follows:

15 “(A) under the plan amounts will not be  
16 made available to participants or beneficiaries  
17 earlier than the occurrence of a distributable  
18 event,”.

19 (2) Paragraph (1) of section 457(a) of such  
20 Code is amended to read as follows:

21 “(1) IN GENERAL.—Any amount of compensa-  
22 tion deferred under an eligible deferred compensa-  
23 tion plan, and any income attributable to the  
24 amounts so deferred, shall be includible in gross in-  
25 come only for the taxable year in which such com-

1       pensation or other income is paid to the participant  
2       or other beneficiary.”.

3           (3) Subsection (d) of section 457 of such Code  
4       is amended by striking paragraph (3).

5           (4) Paragraph (9) of section 457(e) of such  
6       Code is amended to read as follows:

7           “(9) SMALL BENEFITS NOT TREATED AS MADE  
8       AVAILABLE BY REASON OF CERTAIN ELECTIONS.—  
9       For purposes of subsection (d)(1)(A), the total  
10      amount payable to a participant under an eligible  
11      deferred compensation plan shall not be treated as  
12      made available merely because the participant may  
13      elect to receive such amount (or the plan may dis-  
14      tribute such amount without the participant’s con-  
15      sent) if—

16           “(A) the portion of such amount which is  
17           not attributable to rollover contributions (as de-  
18           fined in section 411(a)(11)(D)) does not exceed  
19           the dollar limit under section 411(a)(11)(A),  
20           and

21           “(B) such amount may be distributed only  
22           if—

23           “(i) no amount has been deferred  
24           under the plan with respect to such partici-

1                   pant during the 2-year period ending on  
2                   the date of the distribution, and  
3                   “(ii) there has been no prior distribu-  
4                   tion under the plan to such participant to  
5                   which this subparagraph applied.”.

6       (e) **HARDSHIP DEFINITION.**—

7           (1) **IN GENERAL.**—Within 180 days after the  
8       date of enactment of this Act, the Secretary of the  
9       Treasury shall issue rules under which, except as  
10      provided in paragraph (2), the determination of  
11      whether a participant has had a hardship for pur-  
12      poses of section 414(w)(1)(E) of the Internal Rev-  
13      enue Code of 1986 shall be made pursuant to Treas-  
14      ury Regulation section 1.401(k)–1(d)(3), as such  
15      section is amended from time to time by the Sec-  
16      retary.

17          (2) **BENEFICIARIES.**—Within 180 days after  
18      the date of enactment of this Act, the Secretary of  
19      the Treasury shall modify the rules for determining  
20      whether a participant has had a hardship for pur-  
21      poses of section 414(w)(1)(E) of such Code. Pursu-  
22      ant to such modification, any event, such as a med-  
23      ical expense, that would constitute a hardship if it  
24      occurred with respect to a participant’s spouse or  
25      dependent (as defined in section 152 of such Code)

1 shall, to the extent permitted under a plan, con-  
2 stitute a hardship if it occurs with respect to a per-  
3 son who is a beneficiary with respect to the partici-  
4 pant under the plan.

5 (f) EFFECTIVE DATE.—

6 (1) IN GENERAL.—Except as provided in para-  
7 graph (2), the amendments made by this section  
8 shall apply to years beginning after December 31,  
9 2005.

10 (2) SPECIAL RULE.—In the case of amounts at-  
11 tributable to contributions to an eligible deferred  
12 compensation plan (as defined in section 457(b) of  
13 the Internal Revenue Code of 1986) made before the  
14 first day of the first year beginning after December  
15 31, 2005, withdrawals of such amounts from such a  
16 plan may be permitted upon unforeseeable emer-  
17 gency (as defined under section 457(d)(1)(A)(iii) of  
18 such Code, as in effect on the day before the enact-  
19 ment of this Act).

20 **SEC. 306. ALLOW LEVEL DOLLAR CONTRIBUTIONS TO SEPS.**

21 (a) IN GENERAL.—Subparagraph (C) of section  
22 408(k)(3) of the Internal Revenue Code of 1986 (relating  
23 to contributions must bear uniform relationship to total  
24 compensation) is amended by inserting before the period  
25 at the end the following: “or unless such contributions are



1 a uniform dollar amount on behalf of each such em-  
 2 ployee.”.

3 (b) EFFECTIVE DATE.—The amendment made by  
 4 this section shall apply to years beginning after December  
 5 31, 2005.

6 **SEC. 307. TAX TREATMENT OF CERTAIN NONTRADE OR**  
 7 **BUSINESS SEP CONTRIBUTIONS.**

8 (a) IN GENERAL.—Subparagraph (B) of section  
 9 4972(c)(6) of the Internal Revenue Code of 1986 (relating  
 10 to exceptions) is amended—

11 (1) by striking “408(p) or” and inserting  
 12 “408(p),”, and

13 (2) by inserting after “401(k)(11))” the fol-  
 14 lowing: “, or a simplified employee pension (within  
 15 the meaning of section 408(k))”.

16 (b) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to years beginning after December  
 18 31, 2005.

19 **SEC. 308. UNIFORM AVAILABILITY OF DESIGNATED RSA**  
 20 **CONTRIBUTIONS.**

21 (a) IN GENERAL.—Paragraph (1) of section 402A(e)  
 22 of the Internal Revenue Code of 1986 is amended by strik-  
 23 ing “and” at the end of subparagraph (A), by striking  
 24 the period at the end of subparagraph (B) and inserting

1 “, and”, and by adding at the end the following subpara-  
 2 graphs:

3 “(C) an eligible deferred compensation  
 4 plan under section 457 of an eligible employer  
 5 described in section 457(e)(1)(A), and

6 “(D) an annuity plan described in section  
 7 403(a).”.

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 this section shall apply to taxable years beginning after  
 10 December 31, 2005.

11 **SEC. 309. ALLOW CERTAIN PLAN TRANSFERS AND MERG-**  
 12 **ERS.**

13 (a) AMENDMENT TO THE INTERNAL REVENUE CODE  
 14 OF 1986.—

15 (1) IN GENERAL.—Section 414 of the Internal  
 16 Revenue Code of 1986 (relating to definitions and  
 17 special rules) is amended by adding at the end the  
 18 following new subsection:

19 “(x) CERTAIN PLAN TRANSFERS AND MERGERS.—

20 “(1) IN GENERAL.—Under rules prescribed by  
 21 the Secretary, no amount shall be includible in gross  
 22 income by reason of—

23 “(A) a transfer of all or a portion of the  
 24 account balance of a participant or beneficiary,  
 25 whether or not vested, from a defined contribu-

tion plan described in section 401(a) or section 403(a) of an employer to an annuity contract described in section 403(b) of the same employer,

“(B) a transfer of all or a portion of the account balance of a participant or beneficiary, whether or not vested, from an annuity contract described in section 403(b) of an employer to a defined contribution plan described in section 401(a) or section 403(a) of the same employer, or

“(C) a merger of a defined contribution plan described in section 401(a) or section 403(a) of an employer with an annuity contract described in section 403(b) of the same employer,

so long as the transfer or merger does not cause a reduction in the vested benefit or total benefit (including non-vested benefit) of any participant or beneficiary. A plan or contract shall not fail to be considered to be described in sections 401(a), 403(a), or 403(b) (as applicable) merely because such plan or contract engages in a transfer or merger described in this paragraph.

1           “(2) DISTRIBUTIONS.—Amounts transferred or  
 2 merged pursuant to paragraph (1) shall be subject  
 3 to the requirements of paragraphs (3) and (4) and  
 4 to the distribution requirements under sections  
 5 401(a), 403(a), or 403(b) applicable to the trans-  
 6 feree or merged plan.

7           “(3) SPOUSAL CONSENT AND ANTI-CUTBACK  
 8 PROTECTION.—In the case of a transfer or merger  
 9 described in paragraph (1), amounts in the trans-  
 10 feree or merged plan that are attributable to the  
 11 transferor or predecessor plan shall—

12               “(A)(i) be subject to section 401(a)(11) or  
 13 section 205 of the Employee Retirement Income  
 14 Security Act of 1974 to the extent that such  
 15 sections applied to such amounts in the trans-  
 16 feror or predecessor plan, or

17               “(ii) be required to satisfy the require-  
 18 ments of section 401(a)(11)(B)(iii)(I) or section  
 19 205(b)(1)(C)(i) of the Employee Retirement In-  
 20 come Security Act of 1974 to the extent that  
 21 such sections applied to such amounts in the  
 22 transferor or predecessor plan, and

23               “(B) be treated as subject to section  
 24 411(d)(6) and section 204(g) of the Employee  
 25 Retirement Income Security Act of 1974 to the

1 extent that such amounts were subject to such  
2 sections in the transferor or predecessor plan.

3 “(4) SPECIAL RULES.—Under rules prescribed  
4 by the Secretary, to the extent amounts transferred  
5 or merged pursuant to paragraph (1) were otherwise  
6 entitled to grandfather treatment under the trans-  
7 feror or predecessor plan, such amounts (and income  
8 or loss attributable thereto) shall remain entitled to  
9 such treatment under the transferee or merged plan.  
10 The rules prescribed by the Secretary shall require  
11 that such amounts be separately accounted for by  
12 the transferee or merged plan. For purposes of this  
13 paragraph, ‘grandfather treatment’ shall mean spe-  
14 cial treatment under the Internal Revenue Code of  
15 1986 that is provided for prior benefits, prior peri-  
16 ods of time, or certain individuals in connection with  
17 a change in the applicable law.

18 “(5) CONSENT.—In the case of a qualified trust  
19 described in section 401(a) or 403(a) and an annu-  
20 ity contract described in section 403(b) with respect  
21 to which transfers may be made only with the con-  
22 sent of a participant or beneficiary pursuant to the  
23 terms of such trust or contract or pursuant to appli-  
24 cable law, such consent requirement shall apply  
25 without regard to this subsection. Nothing in this

1 subsection shall affect the application of contract or  
2 plan terms otherwise applicable in the case of a  
3 withdrawal from the contract or plan.”.

4 (2) AGGREGATION.—Paragraph (2) of section  
5 414(t) of such Code is amended by inserting  
6 “414(x),” after “274(j),”.

7 (b) AMENDMENT TO THE EMPLOYEE RETIREMENT  
8 INCOME SECURITY ACT OF 1974.—Section 4 of the Em-  
9 ployee Retirement Income Security Act of 1974 (29  
10 U.S.C. 1003) is amended by adding at the end the fol-  
11 lowing new subsection:

12 “(d) This title shall apply to any plan or contract de-  
13 scribed in section 414(x) of the Internal Revenue Code  
14 of 1986 to the extent necessary to comply with the re-  
15 quirements of such section.”.

16 (c) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by  
18 this section shall apply to transfers or mergers in  
19 years beginning after the Secretary of the Treasury  
20 prescribes rules under section 414(x) of the Internal  
21 Revenue Code of 1986.

22 (2) RULES.—The Secretary of the Treasury  
23 shall issue rules under section 414(x) of the Internal  
24 Code of 1986 within 1 year after the date of enact-  
25 ment of this Act.

1 **TITLE IV—EXPANDING RETIRE-**  
 2 **MENT SAVINGS FOR TAX-EX-**  
 3 **EMPT ORGANIZATION AND**  
 4 **GOVERNMENT EMPLOYEES**

5 **SEC. 401. WAIVER OF 10 PERCENT EARLY WITHDRAWAL**  
 6 **PENALTY TAX ON CERTAIN DISTRIBUTIONS**  
 7 **OF PENSION PLANS FOR PUBLIC SAFETY EM-**  
 8 **PLOYEES.**

9 (a) IN GENERAL.—Subsection (t) of section 72 of the  
 10 Internal Revenue Code of 1986 (relating to subsection not  
 11 to apply to certain distributions) is amended by adding  
 12 at the end the following new paragraph:

13 “(10) DISTRIBUTIONS TO QUALIFIED PUBLIC  
 14 SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

15 “(A) IN GENERAL.—In the case of a dis-  
 16 tribution to a qualified public safety employee  
 17 from a governmental plan (within the meaning  
 18 of section 414(d)) which is a defined benefit  
 19 plan, paragraph (2)(A)(v) shall be applied by  
 20 substituting ‘age 50’ for ‘age 55’.

21 “(B) QUALIFIED PUBLIC SAFETY EM-  
 22 PLOYEE.—For purposes of this paragraph, the  
 23 term ‘qualified public safety employee’ means  
 24 any employee of a State or political subdivision  
 25 of a State who provides police protection, fire-

1 fighting services, or emergency medical services  
 2 for any area within the jurisdiction of such  
 3 State or political subdivision.”.

4 (b) EFFECTIVE DATE.—The amendment made by  
 5 this section shall apply to distributions after the date of  
 6 the enactment of this Act.

7 **SEC. 402. CLARIFICATIONS REGARDING PURCHASE OF PER-**  
 8 **MISSIVE SERVICE CREDIT.**

9 (a) IN GENERAL.—Subparagraph (A) of section  
 10 457(e)(17) of the Internal Revenue Code of 1986 (relating  
 11 to trustee-to-trustee transfers to purchase permissive serv-  
 12 ice credit), and subparagraph (A) of section 403(b)(13)  
 13 of such Code (relating to trustee-to-trustee transfers to  
 14 purchase permissive service credit), are both amended by  
 15 striking “section 415(n)(3)(A)” and inserting “section  
 16 415(n)(3) (without regard to subparagraphs (B) and (C)  
 17 thereof)”.

18 (b) DISTRIBUTION REQUIREMENTS.—Section  
 19 457(e)(17) and section 403(b)(13) of such Code are both  
 20 amended by adding at the end the following sentence:  
 21 “Amounts transferred under this paragraph shall be dis-  
 22 tributed solely in accordance with section 401(a) as appli-  
 23 cable to such defined benefit plan.”.

24 (c) SERVICE CREDIT.—Clause (ii) of section  
 25 415(n)(3)(A) of such Code is amended to read as follows:



1 “(ii) which relates to benefits with re-  
2 spect to which such participant is not oth-  
3 erwise entitled, and”.

4 (d) EFFECTIVE DATE.—The amendments made by  
5 this section shall take effect as if included in the amend-  
6 ments made by section 647 of the Economic Growth and  
7 Tax Relief Reconciliation Act of 2001.

8 **SEC. 403. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**  
9 **MENT PLANS.**

10 An individual shall not be precluded from partici-  
11 pating in an eligible deferred compensation plan by reason  
12 of having received a distribution under section 457(e)(9)  
13 of the Internal Revenue Code of 1986, as in effect prior  
14 to the enactment of the Small Business Job Protection  
15 Act of 1996.

16 **SEC. 404. CLARIFICATION OF MINIMUM DISTRIBUTION**  
17 **RULES.**

18 The Secretary of the Treasury shall issue regulations  
19 under which a governmental plan (as defined in section  
20 414(d) of the Internal Revenue Code of 1986) shall, for  
21 all years to which section 401(a)(9) of such Code applies  
22 to such plan, be treated as having complied with such sec-  
23 tion 401(a)(9) if such plan complies with a reasonable  
24 good faith interpretation of such section 401(a)(9).

1 **SEC. 405. CHURCH PLAN RULE.**

2 (a) IN GENERAL.—Paragraph (11) of section 415(b)  
 3 of the Internal Revenue Code of 1986 is amended by add-  
 4 ing at the end the following: “Subparagraph (B) of para-  
 5 graph (1) shall not apply to a plan maintained by an orga-  
 6 nization described in section 3121(w)(3) except with re-  
 7 spect to highly compensated benefits. For purposes of this  
 8 paragraph, the term ‘highly compensated benefits’ means  
 9 any benefits accrued for an employee in any year on or  
 10 after the first year in which such employee is a highly com-  
 11 pensated employee (as defined in section 414(q)) of the  
 12 organization described in section 3121(w)(3). For pur-  
 13 poses of applying paragraph (1)(B) to highly compensated  
 14 benefits, all benefits of the employee otherwise taken into  
 15 account (without regard to this paragraph) shall be taken  
 16 into account.”.

17 (b) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to plan years beginning after De-  
 19 cember 31, 2005.

20 **SEC. 406. CLARIFICATION OF TREATMENT OF INDIAN TRIB-**  
 21 **AL GOVERNMENTS.**

22 (a) DEFINITION OF GOVERNMENTAL PLAN.—

23 (1) AMENDMENT TO INTERNAL REVENUE CODE  
 24 OF 1986.—Section 414(d) of the Internal Revenue  
 25 Code of 1986 (definition of governmental plan) is  
 26 amended by adding at the end thereof the following

1 new sentence: “The term ‘governmental plan’ also  
2 includes a plan established or maintained for its em-  
3 ployees by an Indian tribal government (as defined  
4 in section 7701(a)(40)), a subdivision of an Indian  
5 tribal government (determined in accordance with  
6 section 7871(d)), an agency or instrumentality of an  
7 Indian tribal government or a subdivision thereof, or  
8 an entity established under tribal, Federal, or State  
9 law which is wholly owned or controlled by any of  
10 the foregoing.”.

11 (2) AMENDMENT TO EMPLOYEE RETIREMENT  
12 INCOME SECURITY ACT OF 1974.—Section 3(32) of  
13 the Employee Retirement Income Security Act of  
14 1974 (29 U.S.C. 1002(32)) is amended by adding at  
15 the end the following new sentence: “The term ‘gov-  
16 ernmental plan’ also includes a plan established or  
17 maintained for its employees by an Indian tribal  
18 government (as defined in section 7701(a)(40) of the  
19 Internal Revenue Code of 1986), a subdivision of an  
20 Indian tribal government (determined in accordance  
21 with section 7871(d) of such Code), an agency or in-  
22 strumentality of an Indian tribal government or sub-  
23 division thereof, or an entity established under trib-  
24 al, Federal, or State law which is wholly owned or  
25 controlled by any of the foregoing.”.

1 (b) CLARIFICATION OF TREATMENT OF INDIAN  
2 TRIBAL GOVERNMENTS.—

3 (1) AMENDMENTS TO INTERNAL REVENUE  
4 CODE OF 1986.—

5 (A) POLICE AND FIREFIGHTERS.—Sub-  
6 paragraph (H) of section 415(b)(2) of the In-  
7 ternal Revenue Code of 1986 (defining partici-  
8 pant) is amended—

9 (i) in clause (i) by striking “State or  
10 political subdivision” and inserting “State,  
11 Indian tribal government (as defined in  
12 section 7701(a)(40)), or any political sub-  
13 division”, and

14 (ii) in clause (ii)(I) by striking “State  
15 or political subdivision” both places it ap-  
16 pears and inserting “State, Indian tribal  
17 government (as so defined), or any political  
18 subdivision”.

19 (B) STATE AND LOCAL GOVERNMENT  
20 PLANS.—

21 (i) IN GENERAL.—Subparagraph (A)  
22 of section 415(b)(10) of such Code (relat-  
23 ing to limitation to equal accrued benefit)  
24 is amended—

1 (I) by inserting “, Indian tribal  
 2 government (as defined in section  
 3 7701(a)(40)),” after “State”,

4 (II) by inserting “any” before  
 5 “political subdivision”, and

6 (III) by inserting “any of” before  
 7 “the foregoing”.

8 (ii) CONFORMING AMENDMENT.—The  
 9 heading for paragraph (10) of section  
 10 415(b) of such Code is amended to read as  
 11 follows:

12 “(10) SPECIAL RULE FOR STATE, INDIAN TRIB-  
 13 AL, AND LOCAL GOVERNMENT PLANS.—”.

14 (C) GOVERNMENT PICK UP CONTRIBU-  
 15 TIONS.—Paragraph (2) of section 414(h) of  
 16 such Code (relating to designation by units of  
 17 government) is amended by striking “State or  
 18 political subdivision” and inserting “State, In-  
 19 dian tribal government (as defined in section  
 20 7701(a)(40)), or any political subdivision”.

21 (D) DISTRIBUTIONS TO PUBLIC SAFETY  
 22 EMPLOYEES.—Subparagraph (B) of section  
 23 72(t)(10) of such Code, as added by this Act,  
 24 is amended—

(i) by striking “State or political subdivision of a State” and inserting “State, Indian tribal government (as defined in section 7701(a)(4)), or political subdivision thereof”, and

(ii) by striking “such State or political subdivision” and inserting “such State, Indian tribal government (as defined in section 7701(a)(4)), or political subdivision thereof”.

(2) AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—Section 4021(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1321(b)) is amended—

(A) in paragraph (12), by striking “or” at the end;

(B) in paragraph (13), by striking “plan.” and inserting “plan; or”; and

(C) by adding at the end the following new paragraph:

“(14) established and maintained for its employees by an Indian tribal government (as defined in section 7701(a)(40) of the Internal Revenue Code of 1986), a subdivision of an Indian tribal government (determined in accordance with section

1       7871(d) of such Code), an agency or instrumentality  
 2       of an Indian tribal government or subdivision there-  
 3       of, or an entity established under tribal, Federal, or  
 4       State law which is wholly owned or controlled by any  
 5       of the foregoing.”.

6       (c) EFFECTIVE DATE.—The amendments made by  
 7       this section shall apply to years beginning before, on, or  
 8       after the date of the enactment of this Act.

9       **SEC. 407. DEFERRAL AGREEMENTS.**

10       (a) IN GENERAL.—Paragraph (4) of section 457(b)  
 11       of the Internal Revenue Code of 1986 is amended by add-  
 12       ing the following after “month”: “or, in the case of a plan  
 13       of an eligible employer described in subsection (e)(1)(A),  
 14       before the date on which the compensation is currently  
 15       available”.

16       (b) EFFECTIVE DATE.—The amendment made by  
 17       this section shall apply to years beginning after December  
 18       31, 2005.

19       **SEC. 408. PLANS MAINTAINED BY STATE OR LOCAL GOV-**  
 20       **ERNMENTS.**

21       (a) IN GENERAL.—Subparagraph (F) of section  
 22       415(b)(2) of the Internal Revenue Code of 1986 is amend-  
 23       ed to read as follows:

24                       “(F) PLANS MAINTAINED BY STATE OR  
 25                       LOCAL GOVERNMENTS.—

1                   “(i) IN GENERAL.—In the case of a  
 2                   governmental plan (within the meaning of  
 3                   section 414(d)) maintained by a State of  
 4                   local government or political subdivision  
 5                   thereof (or agency or instrumentality  
 6                   thereof), subparagraph (C) shall be applied  
 7                   as if the following sentence were added at  
 8                   the end: ‘The reduction under this sub-  
 9                   paragraph shall not reduce the limitation  
 10                  of paragraph (1)(A) below (i) \$130,000 if  
 11                  the benefit begins at or after age 55, or  
 12                  (ii) if the benefit begins before age 55, the  
 13                  equivalent of the \$130,000 limitation at  
 14                  age 55.’”.

15               (b) COST-OF-LIVING ADJUSTMENTS.—

16               (1) PLANS MAINTAINED BY STATE OR LOCAL  
 17               GOVERNMENTS.—Paragraph (1) of section 415(d) of  
 18               such Code is amended by striking “and” at the end  
 19               of subparagraph (B), by redesignating subparagraph  
 20               (C) as subparagraph (D), and by inserting after sub-  
 21               paragraph (B) the following new subparagraph:

22                   “(C) the \$130,000 amount in subsection  
 23                   (b)(2)(F), and”.

24               (2) BASE PERIOD.—Paragraph (3) of section  
 25               415(d) of such Code is amended by redesignating



1        subparagraph (D) as subparagraph (E) and by in-  
2        serting after subparagraph (C) the following new  
3        subparagraph:

4                “(D) \$130,000 AMOUNT.—The base period  
5                taken into account for purposes of paragraph  
6                (l)(C) is the calendar quarter beginning July 1,  
7                2005.”.

8                (3) ROUNDING RULE RELATING TO DEFINED  
9        BENEFIT PLANS.—Subparagraph (B) of section  
10       415(d)(4) of such Code is amended to read as fol-  
11       lows:

12               “(B) \$130,000 AND \$40,000 AMOUNTS.—  
13               Any increase under subparagraph (C) or (D) of  
14               paragraph (1) which is not a multiple of \$1,000  
15               shall be rounded to the next lowest multiple of  
16               \$1,000.”.

17               (4) CONFORMING AMENDMENT.—Subparagraph  
18       (E) of section 415(d)(3) of such Code (as amended  
19       by paragraph (2)) is amended by striking “para-  
20       graph (l)(C)” and inserting “paragraph (l)(D)”.

21       (c) EFFECTIVE DATE.—The amendments made by  
22       this section shall apply to years beginning after December  
23       31, 2005.

1 **SEC. 409. CLARIFICATION OF TREATMENT OF SECTION**  
2 **403(b) PROGRAMS.**

3 (a) **ADMINISTRATION.**—The Secretary of the Treas-  
4 ury shall not issue any rules which would impose materi-  
5 ally greater burdens and responsibilities on employers with  
6 respect to the administration of a program described in  
7 section 403(b) of the Internal Revenue Code of 1986 than  
8 are imposed as of the date of enactment of this Act.

9 (b) **TRANSFERS.**—Under rules prescribed by the Sec-  
10 retary of the Treasury, participants shall be permitted to  
11 directly transfer all or part of their interest in a section  
12 403(b) annuity contract or custodial account to another  
13 section 403(b) annuity contract or custodial account with-  
14 out violating the prohibitions against in-service with-  
15 draws in sections 403(b)(7) and 403(b)(11) of such  
16 Code. These rules shall be consistent with the principles  
17 of Revenue Ruling 90–24.

18 (c) **PROPOSED REGULATIONS.**—The Secretary of the  
19 Treasury shall not finalize proposed regulations published  
20 on November 15, 2004, unless such regulations reflect the  
21 requirements of this section.

22 (d) **EFFECTIVE DATE.**—The provisions of this sec-  
23 tion shall take effect on the date of enactment of this Act.

1     **TITLE V—SIMPLIFICATION AND**  
2                     **EQUITY**

3     **SEC. 501. UPDATING AND SIMPLIFYING THE MINIMUM DIS-**  
4                     **TRIBUTION RULES.**

5             (a) REQUIRED DISTRIBUTIONS.—

6                 (1) INCREASE IN AGE FOR REQUIRED BEGIN-  
7             NING DATE.—Clauses (i) and (ii) of section  
8             401(a)(9)(C) of the Internal Revenue Code of 1986  
9             (relating to required beginning date) are amended by  
10            striking “age 70½” each place it appears and in-  
11            serting “the applicable age”.

12            (2) MANDATORY DISTRIBUTION AGE.—Para-  
13            graph (9) of section 401(a) of such Code (relating  
14            to required distributions) is amended by inserting at  
15            the end the following new subparagraph:

16                     “(H) APPLICABLE AGE.—

17                         “(i) IN GENERAL.—For purposes of  
18                     this paragraph, the applicable age shall be  
19                     70½, adjusted pursuant to clause (ii).

20                         “(ii) ADJUSTMENT.—The Secretary  
21                     shall increase the applicable age annually  
22                     in a manner proportional to increases in  
23                     life expectancy (as determined by the Sec-  
24                     retary) that occur on or after January 1,  
25                     2005, except that no adjustment shall be

1           made until the applicable age as adjusted  
 2           would equal or exceed age 72. Any applica-  
 3           ble age which is not a whole number shall  
 4           be rounded to the next lower whole num-  
 5           ber.”.

6           (3) SPOUSE BENEFICIARIES.—Subclause (I) of  
 7           section 401(a)(9)(B)(iv) of such Code (relating to  
 8           special rule for surviving spouse of employee) is  
 9           amended by striking “age 70½” and inserting “the  
 10          applicable age”.

11          (4) ACTUARIAL ADJUSTMENT OF BENEFIT  
 12          UNDER DEFINED BENEFIT PLAN.—Clause (iii) of  
 13          section 401(a)(9)(C) of such Code (relating to actu-  
 14          arial adjustment) is amended to read as follows:

15                 “(iii) ACTUARIAL ADJUSTMENT.—

16                         “(I) IN GENERAL.—In the case  
 17                         of a defined benefit plan, an employ-  
 18                         ee’s accrued benefit shall be actuari-  
 19                         ally increased to take into account the  
 20                         period after the applicable date during  
 21                         which the employee was not receiving  
 22                         any benefits under the plan.

23                         “(II) APPLICABLE DATE.—For  
 24                         purposes of clause (I), the term ‘appli-  
 25                         cable date’ means April 1 of the cal-

1                   endar year following the calendar year  
 2                   in which the employee attains age  
 3                   70 $\frac{1}{2}$ .”.

4           (b) REDUCTION IN EXCISE TAX.—Subsection (a) of  
 5 section 4974 of such Code (relating to excise tax on cer-  
 6 tain accumulations in qualified retirement plans) is  
 7 amended by striking “50 percent” and inserting “25 per-  
 8 cent”.

9           (c) SIMPLIFICATION FOR INDIVIDUALS.—

10           (1) IN GENERAL.—Section 408(a) of such Code  
 11 is amended by redesignating subsection (r) as sub-  
 12 section (s) and by inserting after subsection (q) the  
 13 following subsection—

14           “(r) MINIMUM DISTRIBUTION EXEMPTION FOR  
 15 SMALL ACCOUNTS.—

16           “(1) IN GENERAL.—Subsections (a)(6) and  
 17 (b)(3) shall not apply to the individual retirement  
 18 accounts and individual retirement annuities of an  
 19 individual described in paragraph (2).

20           “(2) INDIVIDUALS AFFECTED.—

21           “(A) IN GENERAL.—An individual is de-  
 22 scribed in this paragraph for a taxable year if,  
 23 as of the last day of the preceding taxable year,  
 24 the individual’s vested interest in all affected

1 retirement plans has a combined value that  
2 does not exceed \$100,000.

3 “(B) LIFE ANNUITY RULE.—For purposes  
4 of subparagraph (A), an individual’s vested in-  
5 terest in an affected retirement plan shall not  
6 be taken into account to the extent that such  
7 interest has been used to purchase an annuity  
8 contract under which payments described in  
9 section 402(e)(7)(D)(i) are made.

10 “(3) AFFECTED RETIREMENT PLANS.—

11 “(A) IN GENERAL.—With respect to an in-  
12 dividual, the term ‘affected retirement plan’  
13 means any plan described in paragraph (3), (4),  
14 or (5) of section 4974(c), other than an RSA.

15 “(B) SPECIAL RULE.—A plan described in  
16 section 4974(c)(3) shall not be treated as an af-  
17 fected retirement plan with respect to an indi-  
18 vidual for any year prior to the first year for  
19 which a distribution would be required under  
20 section 403(b)(10) (without regard to this sub-  
21 section).

22 “(4) LIMITATION ON TOTAL REQUIRED DIS-  
23 TRIBUTIONS.—Under rules prescribed by the Sec-  
24 retary, in the case of an individual not described in  
25 paragraph (2), the total amount required to be dis-

1       tributed under subsections (a)(6) and (b)(3), in com-  
 2       bination with the total amount required to be dis-  
 3       tributed under section 403(b)(10), shall not exceed  
 4       the excess of the combined value of the individual's  
 5       vested interest in all affected retirement plans over  
 6       \$100,000.

7               “(5) COST-OF-LIVING ADJUSTMENT.—The Sec-  
 8       retary shall adjust the \$100,000 amount in para-  
 9       graphs (2) and (4) at the same time and in the  
 10      same manner as under section 415(d), except that  
 11      the base period shall be the calendar quarter ending  
 12      September 30, 2005.”.

13              (2) PARALLEL RULE FOR SECTION 403(b)  
 14      PLANS.—Paragraph (10) of section 403(b) of such  
 15      Code is amended by adding at the end the following:  
 16      “For purposes of applying the requirements of this  
 17      paragraph, rules similar to the rules of section  
 18      408(r) shall apply.”.

19              (3) CONFORMING AMENDMENTS.—

20              (A) Paragraph (6) of section 408(a) of  
 21      such Code is amended by striking “Under regu-  
 22      lations” and inserting “Except as provided in  
 23      subsection (r), under regulations”.

24              (B) Paragraph (3) of section 408(b) of  
 25      such Code is amended by striking “Under regu-

1           lations” and inserting “Except as provided in  
2           subsection (r), under regulations”.

3       (d) EFFECTIVE DATE.—

4           (1) IN GENERAL.—Except as provided in para-  
5       graph (2), the amendments made by this section  
6       shall apply to years beginning after December 31,  
7       2005.

8           (2) TRANSITION.—A plan shall not be treated  
9       as failing to meet the requirements of section  
10      401(a)(9) of the Internal Revenue Code of 1986  
11      merely because, in years beginning after December  
12      31, 2005, no distribution is made to an employee be-  
13      fore the employee’s required beginning date, as de-  
14      termined in accordance with the amendments made  
15      by this section.

16   **SEC. 502. CLARIFICATION OF CATCH-UP CONTRIBUTIONS.**

17      (a) EXCEPTION TO NONDISCRIMINATION RULES.—

18           (1) IN GENERAL.—Paragraph (4) of section  
19      414(v) of the Internal Revenue Code of 1986 (relat-  
20      ing to application of nondiscrimination rules) is  
21      amended by redesignating subparagraph (B) as sub-  
22      paragraph (C) and by inserting after subparagraph  
23      (A) the following new subparagraph:

24                   “(B) EXCEPTION.—An applicable employer  
25                   plan shall not fail to satisfy the requirements of



1           this subparagraph solely because another appli-  
 2           cable employer plan maintained by the employer  
 3           that is qualified under Puerto Rico law does not  
 4           provide for additional elective deferrals under  
 5           this subsection.”.

6           (2) EXCEPTION TO AGGREGATION RULES.—  
 7           Subparagraph (C) of section 414(v)(4) of such Code,  
 8           as redesignated by paragraph (1), is amended by  
 9           adding at the end the following new sentence: “In  
 10          addition, employees described in section 410(b)(3)  
 11          shall be excluded from consideration. For any year  
 12          in which an employer complies with section 410(b)  
 13          on the basis of separate lines of business pursuant  
 14          to section 410(b)(5), the employer may apply sub-  
 15          paragraph (A) for such year separately with respect  
 16          to employees in each separate line of business.”.

17          (b) EFFECTIVE DATE.—The amendments made by  
 18          this section shall take effect as if included in section  
 19          631(a) of the Economic Growth and Tax Relief Reconcili-  
 20          ation Act of 2001.

21   **SEC. 503. TREATMENT OF UNCLAIMED BENEFITS.**

22          (a) AMENDMENTS TO INTERNAL REVENUE CODE OF  
 23          1986.—

24                 (1) AMENDMENT TO SECTION 401(a)(34).—  
 25          Section 401(a)(34) of the Internal Revenue Code of

1 1986 (relating to benefits of missing participants) is  
 2 amended to read as follows:

3 “(34) UNCLAIMED BENEFITS.—A trust forming  
 4 part of a plan shall not be treated as failing to con-  
 5 stitute a qualified trust under this section merely be-  
 6 cause the plan of which such trust is a part treats  
 7 unclaimed benefits in a manner that satisfies the re-  
 8 quirements of section 414(y).”.

9 (2) AMENDMENT TO SECTION 414.—Section 414  
 10 of such Code (relating to definitions and special  
 11 rules) (as amended by this Act) is amended by add-  
 12 ing at the end the following new subsection:

13 “(y) UNCLAIMED BENEFITS.—

14 “(1) IN GENERAL.—A plan meets the require-  
 15 ments of this subsection only if—

16 “(A) ONGOING PLANS.—In the case of an  
 17 ongoing plan, the plan provides for one or more  
 18 of the following with respect to unclaimed bene-  
 19 fits:

20 “(i) In the case of an unclaimed ben-  
 21 efit to which section 401(a)(31)(B) applies,  
 22 a transfer under section 401(a)(31)(B).

23 “(ii) A transfer to the Pension Benefit  
 24 Guaranty Corporation, in accordance with

1 section 4050(e) of the Employee Retirement  
2 Income Security Act of 1974.

3 “(iii) Any other treatment permitted  
4 under rules prescribed by the Secretary.

5 “(B) TERMINATED PLANS.—In the case of  
6 a terminated plan, the plan provides for the fol-  
7 lowing with respect to unclaimed benefits:

8 “(i) DEFINED BENEFIT PLANS.—In  
9 the case of a defined benefit plan, one or  
10 more of the following:

11 “(I) In the case of an unclaimed  
12 benefit to which section 401(a)(31)(B)  
13 applies, a transfer under section  
14 401(a)(31)(B).

15 “(II) A transfer of the unclaimed  
16 benefit to another defined benefit plan  
17 maintained by the employer.

18 “(III) The purchase of an annu-  
19 ity contract to provide for an individ-  
20 ual’s unclaimed benefit.

21 “(IV) A transfer to the Pension  
22 Benefit Guaranty Corporation in ac-  
23 cordance with section 4050(a) or  
24 4050(e) (as applicable) of the Em-

1           employee Retirement Income Security  
2           Act of 1974.

3           “(V) Any other treatment per-  
4           mitted under rules prescribed by the  
5           Secretary.

6           “(ii)       DEFINED       CONTRIBUTION  
7           PLANS.—In the case of a defined contribu-  
8           tion plan, one or more of the following:

9           “(I) In the case of an unclaimed  
10          benefit to which section 401(a)(31)(B)  
11          applies, a transfer under section  
12          401(a)(31)(B).

13          “(II) A transfer of the unclaimed  
14          benefit to another defined contribution  
15          plan maintained by the employer.

16          “(III) The purchase of an annu-  
17          ity contract to provide for an individ-  
18          ual’s unclaimed benefit.

19          “(IV) A transfer to the Pension  
20          Benefit Guaranty Corporation in ac-  
21          cordance with section 4050(d) or  
22          4050(e) (as applicable) of the Em-  
23          ployee Retirement Income Security  
24          Act of 1974.

1                   “(V) Any other treatment per-  
 2                   mitted under rules prescribed by the  
 3                   Secretary.

4                   “(2) TREATMENT OF TRANSFERS TO PENSION  
 5                   BENEFIT GUARANTY CORPORATION.—

6                   “(A) TRANSFERS TO PBGC.—Amounts  
 7                   transferred from a plan to the Pension Benefit  
 8                   Guaranty Corporation pursuant to paragraph  
 9                   (1) shall be treated as a transfer under section  
 10                  401(a)(31)(A).

11                  “(B) DISTRIBUTIONS FROM PBGC.—Ex-  
 12                  cept as provided in rules prescribed by the Sec-  
 13                  retary, amounts distributed by the Pension  
 14                  Benefit Guaranty Corporation shall be treated  
 15                  as distributed by an individual retirement plan  
 16                  under section 408(d) (without regard to para-  
 17                  graphs (4), (5) and (7) thereof). Rules similar  
 18                  to the rules of section 402(c)(4) shall apply.

19                  “(3) DEFINITIONS.—For purposes of this sub-  
 20                  section—

21                  “(A) UNCLAIMED BENEFIT.—The term  
 22                  ‘unclaimed benefit’ means—

23                         “(i) any benefit of a participant or  
 24                         beneficiary which is distributable under the  
 25                         terms of the plan to the participant or ben-

1           eficiary, if the distribution of the benefit  
2           has not commenced within 1 year after the  
3           later of the date on which the benefit first  
4           became so distributable or the participant's  
5           severance from employment;

6           “(ii) any benefit or other amount of a  
7           participant or beneficiary which is distrib-  
8           utable under the terms of the plan with re-  
9           spect to a missing participant; or

10          “(iii) any benefit to which section  
11          401(a)(31)(B) applies or would apply if  
12          subclause (I) of section 401(a)(31)(B)(i)  
13          did not require the distribution to exceed  
14          \$1,000.

15          A benefit otherwise described in clause (i) shall  
16          not be treated as an unclaimed benefit under  
17          clause (i) if the participant or beneficiary elects  
18          not to have such treatment apply. Any such  
19          participant or beneficiary shall be given reason-  
20          able notice of the opportunity to make such an  
21          election. If the participant or beneficiary fails to  
22          make such an election within a reasonable pe-  
23          riod specified in the notice, any subsequent elec-  
24          tion shall not be given effect and the benefit  
25          shall be treated as an unclaimed benefit. A no-

1           tice mailed to the last known address of the  
2           participant or beneficiary shall be treated as a  
3           notice to the participant or beneficiary for pur-  
4           poses of this paragraph.

5           “(B) ONGOING PLAN.—The term ‘ongoing  
6           plan’ means any plan which has neither termi-  
7           nated nor is in the process of terminating.

8           “(C) TERMINATED PLAN.—The term ‘ter-  
9           minated plan’ means any plan which has termi-  
10          nated or is in the process of terminating.

11          “(D) MISSING PARTICIPANT.—The term  
12          ‘missing participant’ shall have the meaning  
13          given to such term by section 4050(b)(1) of the  
14          Employee Retirement Income Security Act of  
15          1974.”.

16          (3) CONFORMING AMENDMENT.—Subparagraph  
17          (B) of section 401(a)(31) of such Code is amended  
18          by adding at the end the following:

19                 “(iii) OTHER PERMITTED TRANS-  
20                 FERS.—A plan administrator shall be  
21                 treated as having complied with the re-  
22                 quirements of this subparagraph if such  
23                 plan administrator complies with the re-  
24                 quirements of section 414(y).”.

1 (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-  
2 COME SECURITY ACT OF 1974.—

3 (1) IN GENERAL.—Subsection (b) of section  
4 4050 of the Employee Retirement Income Security  
5 Act of 1974 (29 U.S.C. 1350) is amended by adding  
6 at the end the following paragraph:

7 “(3) UNCLAIMED BENEFIT.—The term ‘un-  
8 claimed benefit’ means—

9 “(A) any benefit of a participant or bene-  
10 ficiary which is distributable under the terms of  
11 the plan to the participant or beneficiary, if the  
12 distribution of the benefit has not commenced  
13 within 1 year after the later of the date on  
14 which the benefit first became so distributable  
15 or the participant’s severance from employment;

16 “(B) any benefit or other amount of a par-  
17 ticipant or beneficiary which is distributable  
18 under the terms of the plan with respect to a  
19 missing participant; or

20 “(C) any benefit to which section  
21 401(a)(31)(B) of the Internal Revenue Code of  
22 1986 applies or would apply if subclause (I) of  
23 section 401(a)(31)(B)(i) of such Code did not  
24 require the distribution to exceed \$1,000.



1       A benefit otherwise described in subparagraph (A)  
 2       shall not be treated as an unclaimed benefit under  
 3       subparagraph (A) if the participant or beneficiary  
 4       elects not to have such treatment apply. Any such  
 5       participant or beneficiary shall be given reasonable  
 6       notice of the opportunity to make such an election.  
 7       If the participant or beneficiary fails to make such  
 8       an election within a reasonable period specified in  
 9       the notice, any subsequent election shall not be given  
 10      effect and the benefit shall be treated as an un-  
 11      claimed benefit. A notice mailed to the last known  
 12      address of the participant or beneficiary shall be  
 13      treated as a notice to the participant or beneficiary  
 14      for purposes of this paragraph.”.

15           (2) OTHER AMENDMENTS.—Section 4050 of  
 16      such Act is amended by redesignating subsection (c)  
 17      as subsection (f) and by inserting after subsection  
 18      (b) the following new subsections:

19      “(c) MULTIEMPLOYER PLANS.—The corporation  
 20      shall prescribe rules similar to the rules in subsection (a)  
 21      for multiemployer plans covered by this title that termi-  
 22      nate under section 4041A.

23      “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

24           “(1) TRANSFER TO CORPORATION.—The plan  
 25      administrator of a plan described in paragraph (4)

1 may elect to transfer a missing participant's benefits  
2 to the corporation upon termination of the plan.

3 “(2) INFORMATION TO THE CORPORATION.—To  
4 the extent provided in regulations, the plan adminis-  
5 trator of a plan described in paragraph (4) shall,  
6 upon termination of the plan, provide the corpora-  
7 tion information with respect to the benefits of a  
8 missing participant if the plan transfers such bene-  
9 fits—

10 “(A) to the corporation, or

11 “(B) to an entity other than the corpora-  
12 tion or a plan described in paragraph (4)(B)(ii).

13 “(3) PAYMENT BY THE CORPORATION.—If ben-  
14 efits of a missing participant were transferred to the  
15 corporation under paragraph (1), the corporation  
16 shall, upon location of the participant or beneficiary,  
17 pay to the participant or beneficiary the amount  
18 transferred (or the appropriate survivor benefit) ei-  
19 ther—

20 “(A) in a single sum (plus interest), or

21 “(B) in such other form as is specified in  
22 regulations of the corporation.

23 “(4) PLANS DESCRIBED.—A plan is described  
24 in this paragraph if—

1 “(A) the plan is a pension plan (within the  
2 meaning of section 3(2))—

3 “(i) to which the provisions of this  
4 section do not apply (without regard to  
5 this subsection), and

6 “(ii) which is not a plan described in  
7 paragraphs (2) through (11) of section  
8 4021(b), and

9 “(B) at the time the assets are to be dis-  
10 tributed upon termination, the plan—

11 “(i) has missing participants, and

12 “(ii) has not provided for the transfer  
13 of assets to pay the benefits of all missing  
14 participants to another pension plan (with-  
15 in the meaning of section 3(2)).

16 “(5) CERTAIN PROVISIONS NOT TO  
17 APPLY.—Subsections (a)(1) and (a)(3) shall not  
18 apply to a plan described in paragraph (4).

19 “(e) UNCLAIMED BENEFITS.—

20 “(1) TRANSFER TO CORPORATION.—The plan  
21 administrator of a plan described in paragraph (6)  
22 may elect to transfer unclaimed benefits to the cor-  
23 poration.

24 “(2) INFORMATION TO THE CORPORATION.—

25 The corporation may impose such conditions on

1 transfers of unclaimed benefits to the corporation as  
2 the corporation determines are necessary to facilitate  
3 administration of this subsection and are not incon-  
4 sistent with the purposes of this subsection. Such  
5 conditions may include requirements that the trans-  
6 ferring plan provide to the corporation specified in-  
7 formation and documentation.

8 “(3) PAYMENT TO THE CORPORATION.—With  
9 respect to any participant, any transfer of an un-  
10 claimed benefit to the corporation shall—

11 “(A) in the case of a defined benefit plan,  
12 be a transfer of the participant’s designated  
13 benefit, or

14 “(B) in the case of an individual account  
15 plan, be a transfer of the participant’s vested  
16 account balance under the plan.

17 “(4) PAYMENT BY THE CORPORATION.—Subject  
18 to such reasonable restrictions as may be prescribed  
19 in regulations of the corporation (relating to invest-  
20 ment limitations and otherwise)—

21 “(A) unclaimed benefits of a participant or  
22 beneficiary which are transferred to the cor-  
23 poration pursuant to this subsection shall be  
24 distributed by the corporation to the participant  
25 or beneficiary not later than upon application

1 filed by the participant or beneficiary with the  
2 corporation in such form and manner as may  
3 be prescribed in regulations of the corporation,  
4 and

5 “(B) such benefits shall—

6 “(i) in the case of an individual ac-  
7 count plan, be paid in a single sum (plus  
8 interest) or in such other form as is speci-  
9 fied in regulations of the corporation, or

10 “(ii) in the case of a defined benefit  
11 plan, be paid—

12 “(I) in an amount based on the  
13 designated benefit and the assump-  
14 tions prescribed by the corporation at  
15 the time that the corporation received  
16 the benefit, and

17 “(II) in a form determined under  
18 regulations of the corporation.

19 “(5) NOTICE.—Any transfer of unclaimed bene-  
20 fits of a participant or beneficiary to the corporation  
21 pursuant to this subsection may occur only after  
22 reasonable advance notice of such transfer is pro-  
23 vided by the plan administrator to the participant or  
24 beneficiary. The plan administrator shall also pro-  
25 vide to the participant or beneficiary notice of any

1 such transfer not later than 30 days after the date  
2 of the transfer. Notice mailed to the last known ad-  
3 dress of the participant or beneficiary shall be treat-  
4 ed as a notice to the participant or beneficiary for  
5 purposes of this paragraph. Any such notice shall in-  
6 clude information regarding procedures for obtaining  
7 the distribution of benefits from the corporation in  
8 accordance with paragraph (4).

9 “(6) PLANS DESCRIBED.—A plan is described  
10 in this paragraph if the plan is a pension plan (with-  
11 in the meaning of section 3(2)—

12 “(A)(i) which has neither terminated nor is  
13 in the process of terminating, or

14 “(ii) in the case of an unclaimed benefit to  
15 which section 401(a)(31)(B) of the Internal  
16 Revenue Code of 1986 applies (other than an  
17 unclaimed benefit of a missing participant),  
18 which has terminated or is in the process of ter-  
19 minating, and

20 “(B) which is not a plan described in para-  
21 graphs (2) through (11) of section 4021(b).

22 “(7) CERTAIN PROVISIONS NOT TO APPLY.—  
23 Subsections (a)(1) and (a)(3) shall not apply to a  
24 plan described in paragraph (6).”.

1           (3) CONFORMING AMENDMENT.—Section  
 2       4021(b) of such Act (29 U.S.C. 1321(b)(1)) is  
 3       amended by striking “This” and inserting “Except  
 4       to the extent provided in subsections (d) and (e) of  
 5       section 4050, this”.

6       (c) ESCHEAT LAWS SUPERSEDED.—Section 514(b)  
 7       of the Employee Retirement Income Security Act of 1974  
 8       (29 U.S.C. 1144 (b) (as amended by this Act) is further  
 9       amended—

10           (1) by redesignating paragraph (10) as para-  
 11       graph (11), and

12           (2) by inserting after paragraph (9) the fol-  
 13       lowing new paragraph:

14           “(10) Any escheat or similar law of any State  
 15       shall be superseded to the extent inconsistent with  
 16       any transfer or other treatment of unclaimed bene-  
 17       fits (as defined in section 4050(b)(3)) permitted  
 18       under the Internal Revenue Code of 1986.”.

19       (d) EFFECTIVE DATES AND RELATED RULES.—

20           (1) IN GENERAL.—The amendments made by  
 21       subsections (a) and (b) shall apply to years begin-  
 22       ning after December 31, 2006.

23           (2) REGULATIONS.—The Pension Benefit Guar-  
 24       anty Corporation shall issue regulations necessary to

1 carry out the amendments made by subsection (b)  
 2 not later than December 31, 2006.

3 (3) ESCHEAT LAWS SUPERSEDED.—The  
 4 amendment made by subsection (c) shall apply as of  
 5 the date of enactment of this Act.

6 **SEC. 504. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
 7 **PLANS TO RSA.**

8 (a) IN GENERAL.—Subsection (e) of section 408A of  
 9 the Internal Revenue Code of 1986 (defining qualified roll-  
 10 over contribution) is amended to read as follows:

11 “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For  
 12 purposes of this section, the term ‘qualified rollover con-  
 13 tribution’ means a rollover contribution—

14 “(1) to an RSA from another such account,

15 “(2) from an eligible retirement plan, but only  
 16 if—

17 “(A) in the case of an individual retire-  
 18 ment plan, such rollover contribution meets the  
 19 requirements of section 408(d)(3), and

20 “(B) in the case of any eligible retirement  
 21 plan (as defined in section 402(c)(8)(B) other  
 22 than clauses (i) and (ii) thereof), such rollover  
 23 contribution meets the requirements of section  
 24 402(c), 403(b)(8), or 457(e)(16), as applicable.



1 For purposes of section 408(d)(3)(B), there shall be dis-  
 2 regarded any qualified rollover contribution from an indi-  
 3 vidual retirement plan (other than an RSA) to an RSA.”.

4 (b) CONFORMING AMENDMENTS.—Section  
 5 408A(d)(3) of such Code is amended—

6 (1) in subparagraph (A) by striking “section  
 7 408(d)(3)” inserting “sections 402(c), 403(b)(8),  
 8 408(d)(3), and 457(e)(16)”,

9 (2) in subparagraph (B) by striking “individual  
 10 retirement plan” and inserting “eligible retirement  
 11 plan (as defined by section 402(c)(8)(B))”,

12 (3) in subparagraph (D) by striking “or 6047”  
 13 after “408(i)”,

14 (4) in subparagraph (D) by striking “or both”  
 15 and inserting “persons subject to section  
 16 6047(d)(1), or all of the foregoing persons”, and

17 (5) in the heading by striking “IRA” and insert-  
 18 ing “ELIGIBLE RETIREMENT PLAN”.

19 (c) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply to distributions after December 31,  
 21 2005.

1 **SEC. 505. REFORM EXCISE TAX ON EXCESS CONTRIBU-**  
 2 **TIONS.**

3 (a) EXPANSION OF CORRECTIVE DISTRIBUTION PE-  
 4 RIOD.—Subsection (f) of section 4979 of the Internal Rev-  
 5 enue Code of 1986 is amended—

6 (1) in paragraph (1) by striking “2½ months”  
 7 and inserting “6 months”, and

8 (2) in the heading by striking “2½ MONTHS”  
 9 and inserting “6 MONTHS”.

10 (b) YEAR OF INCLUSION.—Paragraph (2) of section  
 11 4979(f) of such Code is amended to read as follows:

12 “(2) YEAR OF INCLUSION.—Any amount dis-  
 13 tributed as provided in paragraph (1) shall be treat-  
 14 ed as earned and received by the recipient in his tax-  
 15 able year in which such distributions were made.”.

16 (c) EFFECTIVE DATE.—The amendments made by  
 17 this section shall apply to years beginning after December  
 18 31, 2005.

19 **SEC. 506. INTERMEDIATE SANCTIONS FOR INADVERTENT**  
 20 **FAILURES.**

21 (a) IN GENERAL.—Section 401(a) of the Internal  
 22 Revenue Code of 1986 (relating to qualified pension, prof-  
 23 it-sharing, and stock bonus plans) is amended by inserting  
 24 after paragraph (35) the following:

25 “(36) PROTECTION FROM DISQUALIFICATION  
 26 UPON TIMELY CORRECTION OR PAYMENT OF FINE.—

1       A trust shall not fail to constitute a qualified trust  
 2       under this section if the plan of which such trust is  
 3       a part has made good faith efforts to meet the re-  
 4       quirements of this section, has inadvertently failed  
 5       to satisfy 1 or more of such requirements, and ei-  
 6       ther—

7               “(A) substantially corrects (to the extent  
 8               possible) such failure before the date the plan  
 9               becomes subject to a plan examination for the  
 10              applicable year (as determined under rules pre-  
 11              scribed by the Secretary), or

12              “(B) substantially corrects (to the extent  
 13              possible) such failure on or after such date.

14       If the plan satisfies the requirement under subpara-  
 15       graph (B), the Secretary may require the sponsoring  
 16       employer to make a payment to the Secretary in an  
 17       amount that does not exceed an amount that bears  
 18       a reasonable relationship to the severity of the plan’s  
 19       failure to satisfy the requirements of this section.”.

20       (b) APPLICATION TO CASH OR DEFERRED ARRANGE-  
 21       MENTS.—Section 401(k) of such Code is amended by in-  
 22       serting after paragraph (13) the following new paragraph:

23              “(14) PROTECTION FROM DISQUALIFICATION.—  
 24       Rules similar to the rules set forth in section  
 25       401(a)(36) shall apply for purposes of determining

1       whether a cash or deferred arrangement is a quali-  
 2       fied cash or deferred arrangement.”.

3       (c) APPLICATION TO SECTION 403(b) ANNUITY CON-  
 4 TRACTS.—Section 403(b) of such Code is amended by in-  
 5 serting after paragraph (12) the following:

6               “(13) CORRECTION OF ERRORS.—For purposes  
 7       of determining whether the exclusion from gross in-  
 8       come under paragraph (1) is applicable to an em-  
 9       ployee for any taxable year, rules similar to the rules  
 10      set forth in section 401(a)(36) shall apply to any an-  
 11      nuity contract purchased under this subsection or  
 12      any plan established to meet the requirements of  
 13      this subsection.”.

14      (d) EFFECTIVE DATE.—The amendments made by  
 15 this section shall take effect on the date of enactment of  
 16 this Act.

17 **SEC. 507. CLARIFICATION OF SUBSTANTIALLY EQUAL PERI-**  
 18 **ODIC PAYMENT RULE.**

19      (a) IN GENERAL.—Paragraph (4) of section 72(t) of  
 20 the Internal Revenue Code of 1986 (relating to change  
 21 in substantially equal payments) is amended by inserting  
 22 at the end the following new subparagraphs:

23               “(C) ROLLOVERS TO SUBSEQUENT  
 24               PLAN.—If—

1 “(i) payments satisfying paragraph  
2 (2)(A)(iv) are being made from a qualified  
3 retirement plan,

4 “(ii) a transfer or a rollover from the  
5 qualified retirement plan is made to an-  
6 other qualified retirement plan of all or a  
7 portion of the taxpayer’s benefit under the  
8 transferor plan, and

9 “(iii) distributions from the transferor  
10 and transferee plans would in combination  
11 continue to satisfy paragraph (2)(A)(iv) if  
12 made only from the transferor plan,

13 such transfer or rollover shall not be treated as  
14 a modification under subparagraph (A)(ii) and  
15 compliance with paragraph (2)(A)(iv) shall be  
16 determined on the basis of the combined dis-  
17 tributions described in clause (iii).

18 “(D) INTEREST RATE.—Any reasonable in-  
19 terest rate may be used in determining whether  
20 payments are substantially equal under para-  
21 graph (2)(A)(iv).”.

22 (b) EFFECTIVE DATES.—

23 (1) ROLLOVERS.—Section 72(t)(4)(C) of the  
24 Internal Revenue Code of 1986, as added by sub-

1       section (a), shall apply to transfers and rollovers  
2       after the date of enactment of this Act.

3           (2) INTEREST RATE.—Section 72(t)(4)(D) of  
4       such Code, as so added, shall apply to series of pay-  
5       ments commencing on or after the date of enactment  
6       of this Act.

7   **SEC. 508. CLARIFICATION OF TREATMENT OF DISTRIBUTIONS OF ANNUITY CONTRACTS.**

9       (a) IN GENERAL.—Clause (i) of section 402(e)(4)(D)  
10      of the Internal Revenue Code of 1986 is amended by add-  
11      ing after “section 401(c)(1).” the following: “A distribu-  
12      tion of an annuity contract from a trust or annuity plan  
13      referred to in the first sentence of this clause may be  
14      treated as a part of a lump sum distribution.”.

15      (b) EFFECTIVE DATE.—The amendment made by  
16      this section shall take effect as if included in section  
17      1401(b)(1) of the Small Business Job Protection Act of  
18      1996.

19   **SEC. 509. GOLDEN PARACHUTE EXCISE TAX TO APPLY TO EXCESSIVE EMPLOYEE REMUNERATION PAID BY CORPORATION AFTER DECLARATION OF BANKRUPTCY.**

23      (a) IN GENERAL.—Section 4999 of the Internal Rev-  
24      enue Code of 1986 (relating to golden parachute pay-  
25      ments) is amended by redesignating subsection (c) as sub-

1 section (d) and by inserting after subsection (b) the fol-  
 2 lowing new subsection:

3 “(c) TAX ON EXCESSIVE EMPLOYEE REMUNERATION  
 4 IN THE CASE OF BANKRUPTCY.—

5 “(1) IN GENERAL.—There is hereby imposed a  
 6 tax on any person who is a covered employee equal  
 7 to 50 percent of any payment of excessive employee  
 8 remuneration from a corporation which becomes a  
 9 debtor in a title 11 or similar case (as defined in  
 10 section 368(a)(3)(A) of this title, but not including  
 11 a case under chapter 12 of title 11, United States  
 12 Code). The tax imposed under subsection (a) shall  
 13 not apply to the extent that a tax is imposed under  
 14 this subsection.

15 “(2) SPECIAL RULES RELATING TO EXCESSIVE  
 16 EMPLOYEE REMUNERATION.—For purposes of this  
 17 subsection—

18 “(A) EXCESS EMPLOYEE REMUNERATION  
 19 DEFINED.—The term ‘excess employee remu-  
 20 nation’ means remuneration paid directly or  
 21 indirectly to a covered employee during the  
 22 bankruptcy period—

23 “(i) for which a deduction is not al-  
 24 lowed under chapter 1 by reason of the ap-  
 25 plication of section 162(m) or would not be

1 allowed if section 162(m) applied to the  
2 covered employee at the time of payment,  
3 or

4 “(ii) in the case of remuneration to a  
5 covered employee of a corporation that is  
6 not a publicly held corporation described in  
7 section 162(m)(2), that exceeds  
8 \$1,000,000, other than remuneration that  
9 meets requirements similar to the stand-  
10 ards for performance-based compensation  
11 under section 162(m)(4)(C).

12 “(B) Such term shall not include—

13 “(i) remuneration that, on the date  
14 immediately prior to the beginning of the  
15 bankruptcy period, was payable to the cov-  
16 ered employee under a binding obligation  
17 and not subject to a substantial risk of for-  
18 feiture,

19 “(ii) remuneration attributable to con-  
20 tributions to or benefits from an excess re-  
21 tirement plan to the extent that such plan  
22 is maintained solely for the purpose of pro-  
23 viding benefits to employees in excess of  
24 the limitations imposed by 1 or more of



1 sections 401(a)(17), 401(k), 401(m), and  
2 415,

3 “(iii) contributions to or benefits from  
4 a qualified employer plan (as defined in  
5 section 132(m)), or

6 “(iv) any payment that is avoided or  
7 approved by a bankruptcy trustee.

8 “(C) BANKRUPTCY PERIOD.—The term  
9 ‘bankruptcy period’ means any time during the  
10 period beginning 2 years before the date on  
11 which the corporation becomes a debtor de-  
12 scribed in paragraph (1) and ending on the  
13 date such corporation ceases to be such a debt-  
14 or.

15 “(D) COVERED EMPLOYEE.—The term  
16 ‘covered employee’—

17 “(i) has the meaning given such term  
18 by section 162(m)(3), except that such  
19 term shall include an individual who is not  
20 a covered employee under section  
21 162(m)(3) for the taxable year in which  
22 such remuneration is paid but who pre-  
23 viously was a covered employee within the  
24 meaning of section 162(m)(3) during the  
25 bankruptcy period, and

1                   “(ii) with respect to an employee of a  
2                   corporation that is not subject to section  
3                   162(m), includes any employee of such cor-  
4                   poration who would be subject to the re-  
5                   quirement described in section  
6                   162(m)(3)(B) (as modified by this para-  
7                   graph) if such corporation were a publicly  
8                   held corporation (as defined in section  
9                   162(m)(2)).

10                  “(E) 100 PERCENT TAX FOR GROSS UP  
11                  PAYMENTS.—Subsection (b) shall be applied by  
12                  substituting ‘100 percent’ for ‘50 percent’ to  
13                  the extent that any payment is made during the  
14                  bankruptcy period that is contingent upon a tax  
15                  being imposed under this section.

16                  “(F) CHANGE IN OWNERSHIP CONTIN-  
17                  GENCY NOT TO APPLY.—Subsection (b) shall be  
18                  applied without regard to clause (i) of section  
19                  280G(b)(2)(A).”.

20                  (b) EFFECTIVE DATE.—The amendment made this  
21                  section shall apply to payments received after the date of  
22                  the enactment of this Act with respect to any title 11 or  
23                  similar case (as defined in section 4999(c) of the Internal  
24                  Revenue Code of 1986) commenced after such date.

1 **SEC. 510. DIFFERENTIAL PAY.**

2 (a) INCOME TAX WITHHOLDING.—Section 3401 of  
3 the Internal Revenue Code of 1986 (relating to defini-  
4 tions) is amended by adding at the end the following new  
5 subsection:

6 “(i) DIFFERENTIAL WAGE PAYMENTS TO ACTIVE  
7 DUTY MEMBERS OF THE UNIFORMED SERVICES.—

8 “(1) IN GENERAL.—For purposes of subsection  
9 (a), any differential wage payment shall be treated  
10 as a payment of wages by an employer to an em-  
11 ployee.

12 “(2) DIFFERENTIAL WAGE PAYMENTS.—For  
13 purposes of paragraph (1), the term ‘differential  
14 wage payment’ means any payment which—

15 “(A) is made by an employer to an indi-  
16 vidual with respect to any period during which  
17 the individual is performing service in the uni-  
18 formed services while on active duty for a pe-  
19 riod of more than 30 days, and

20 “(B) represents all or a portion of the  
21 wages the individual would have received from  
22 the employer if the individual were performing  
23 service for the employer.”.

24 (b) RETIREMENT PLANS.—

25 (1) IN GENERAL.—Section 414(u) of the Inter-  
26 nal Revenue Code of 1986 (relating to special rules

1 relating to veterans' reemployment rights under  
2 USERRA) is amended by adding at the end the fol-  
3 lowing new paragraph:

4 “(11) TREATMENT OF DIFFERENTIAL WAGE  
5 PAYMENTS.—

6 “(A) IN GENERAL.—Except as provided in  
7 this paragraph, for purposes of applying this  
8 title to a plan to which this subsection ap-  
9 plies—

10 “(i) an individual receiving a differen-  
11 tial wage payment shall be treated as an  
12 employee of the employer making the pay-  
13 ment,

14 “(ii) the differential wage payment  
15 shall be treated as compensation, and

16 “(iii) the plan shall not be treated as  
17 failing to meet the requirements of any  
18 provision described in paragraph (1)(C) by  
19 reason of the treatment described in  
20 clauses (i) and (ii).

21 “(B) SPECIAL RULE FOR DISTRIBU-  
22 TIONS.—

23 “(i) IN GENERAL.—Notwithstanding  
24 subparagraph (A)(i), for purposes of sub-  
25 section (w)(1)(D), an individual shall be

1 treated as having been severed from em-  
2 ployment during any period the individual  
3 is performing service in the uniformed  
4 services described in section 3401(i)(2)(A).

5 “(ii) LIMITATION.—If an individual  
6 elects to receive a distribution by reason of  
7 clause (i), the plan shall provide that the  
8 individual may not make an elective defer-  
9 ral or employee contribution during the 6-  
10 month period beginning on the date of the  
11 distribution.

12 “(C) NONDISCRIMINATION REQUIRE-  
13 MENT.—Subparagraph (A)(iii) shall apply only  
14 if all employees of an employer (as determined  
15 under subsections (b), (c), (m), and (o)) per-  
16 forming service in the uniformed services de-  
17 scribed in section 3401(i)(2)(A) are entitled to  
18 receive differential wage payments on reason-  
19 ably equivalent terms and, if eligible to partici-  
20 pate in a plan maintained by the employer, to  
21 have contributions made to such plan based on  
22 the payments on reasonably equivalent terms.  
23 For purposes of applying this subparagraph,  
24 the provisions of paragraphs (3), (4), and (5) of  
25 section 410(b) shall apply.

1 “(D) DIFFERENTIAL WAGE PAYMENT.—

2 For purposes of this paragraph, the term ‘dif-  
3 ferential wage payment’ has the meaning given  
4 such term by section 3401(i)(2).’”.

5 (2) CONFORMING AMENDMENT.—The heading  
6 for section 414(u) of such Code is amended by in-  
7 serting “and to Differential Wage Payments to  
8 Members on Active Duty” after “USERRA”.

9 (c) DIFFERENTIAL WAGE PAYMENTS TREATED AS  
10 COMPENSATION FOR INDIVIDUAL RETIREMENT PLANS.—  
11 Section 219(f)(1) of the Internal Revenue Code of 1986  
12 (defining compensation) is amended by adding at the end  
13 the following new sentence: “The term ‘compensation’ in-  
14 cludes any differential wage payments (as defined in sec-  
15 tion 3401(i)(2)).’”.

16 (d) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to years beginning after December  
18 31, 2005.

19 **SEC. 511. EXCESS BENEFIT PLANS.**

20 (a) IN GENERAL.—Section 3(36) of the Employee  
21 Retirement Income Security Act of 1974 (29 U.S.C.  
22 1002(36)) is amended to read as follows:

23 “(36) The term ‘excess benefit plan’ means a  
24 plan, without regard to whether such plan is funded,  
25 maintained by an employer solely for the purpose of

1 providing benefits to employees in excess of any limi-  
 2 tation imposed by section 401(a)(17),  
 3 401(k)(3)(A)(ii), 401(m)(2), or 415 of the Internal  
 4 Revenue Code of 1986. To the extent that a sepa-  
 5 rable part of a plan (as determined by the Secretary  
 6 of Labor) maintained by an employer is maintained  
 7 for such purpose, that part shall be treated as a sep-  
 8 arate plan which is an excess benefit plan.”.

9 (b) EFFECTIVE DATE.—The amendment made by  
 10 this section shall apply to plan years beginning after De-  
 11 cember 31, 2005.

12 **SEC. 512. TAX TREATMENT OF EMPLOYEE CONTRIBUTIONS**  
 13 **TO CONTRIBUTORY DEFINED BENEFIT**  
 14 **PLANS.**

15 (a) AMENDMENT TO THE INTERNAL REVENUE CODE  
 16 OF 1986.—Subsection (e) of section 402 of the Internal  
 17 Revenue Code of 1986 (relating to other rules applicable  
 18 to exempt trusts) is amended by adding at the end the  
 19 following new paragraph:

20 “(8) MANDATORY EMPLOYEE CONTRIBUTIONS  
 21 TO DEFINED BENEFIT PLANS.—

22 “(A) IN GENERAL.—Qualified mandatory  
 23 employee contributions shall not be includible in  
 24 gross income for the taxable year of such con-  
 25 tribution.

1           “(B) QUALIFIED MANDATORY EMPLOYEE  
2           CONTRIBUTIONS.—For purposes of subpara-  
3           graph (A), the term ‘qualified mandatory em-  
4           ployee contributions’ means employee contribu-  
5           tions made pursuant to the terms of a defined  
6           benefit plan described in subparagraph (C) in  
7           effect on January 1, 2003 (determined without  
8           regard to any plan amendment made after such  
9           date), which—

10                   “(i) are mandatory contributions (as  
11                   defined in section 411(c)(2)(C)), and

12                   “(ii) do not exceed 2 percent of com-  
13                   pensation (within the meaning of section  
14                   415(c)(3)).

15           “(C) DEFINED BENEFIT PLAN DE-  
16           SCRIBED.—For purposes of subparagraph (B),  
17           a defined benefit plan is described in this sub-  
18           paragraph if such plan—

19                   “(i) requires employee contributions  
20                   as a condition of participation in such  
21                   plan,

22                   “(ii) allows an employee to make a  
23                   one-time irrevocable election to participate  
24                   in the plan,



1 “(iii) does not provide for employee  
2 contributions with respect to which a sepa-  
3 rate account is maintained and treated as  
4 a defined contribution plan under section  
5 414(k), and

6 “(iv) is not a governmental plan  
7 (within the meaning of section 414(d)).”.

8 (b) WITHHOLDING.—Subsection (a) of section 3401  
9 of such Code (defining wages) is amended by striking “or”  
10 at the end of paragraph (20), by striking the period at  
11 the end of paragraph (21) and inserting “; or”, and by  
12 inserting after paragraph (21) the following new para-  
13 graph:

14 “(22) for any payment made to or for the ben-  
15 efit of an employee if at the time of such payment  
16 it is reasonable to believe that the employee will be  
17 able to exclude such payment from income as a  
18 qualified mandatory employee contribution under  
19 section 402(e)(8).”.

20 (c) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to contributions made in years be-  
22 ginning after December 31, 2005.

1 **SEC. 513. PROTECTING OLDER, LONGER SERVICE PARTICI-**  
2 **PANTS.**

3 (a) PROTECTION OF OLDER, LONGER SERVICE PAR-  
4 TICIPANTS IN DEFINED BENEFIT PLANS.—

5 (1) Not later than one year after the date of  
6 the enactment of this Act, the Secretary of the  
7 Treasury shall amend section 1.401(a)(4)–4 of the  
8 Treasury Regulations (as in effect on the date of the  
9 enactment of this Act) to permit a plan to provide  
10 benefits, rights, and features to a closed class of  
11 grandfathered participants, provided that such class  
12 of participants satisfies the requirements of such  
13 section as of the date that the class of participants  
14 was closed. Such section as amended shall ensure  
15 that participants who have been grandfathered  
16 under a former defined benefit plan formula may  
17 continue to receive all benefits, rights, and features  
18 under that formula, including early retirement bene-  
19 fits.

20 (2) Not later than one year after the date of  
21 the enactment of this Act, the Secretary of the  
22 Treasury shall amend section 1.401(a)(4)–  
23 8(b)(1)(iii)(D) of the Treasury Regulations (as in ef-  
24 fect on the date of the enactment of this Act) to per-  
25 mit a defined contribution plan to provide make  
26 whole contributions to a closed class of participants

1       whose defined benefit plan accruals have been re-  
2       duced or eliminated, provided that such class of par-  
3       ticipants satisfies section 410(b)(2)(A)(i) of the In-  
4       ternal Revenue Code of 1986 as of the date that the  
5       class of participants was closed.

6       (b) EFFECTIVE DATE.—This provisions of this sec-  
7       tion shall take effect on the date of the enactment of this  
8       Act.

9       **SEC. 514. CLARIFICATION REGARDING ELECTIVE DEFER-**  
10       **RALS.**

11       (a) IN GENERAL.—Not later than 6 months after the  
12       date of enactment of this Act, the Secretary of the Treas-  
13       ury shall issue rules clarifying that employees who have  
14       had a severance from employment may make—

15               (1) elective deferrals described in section  
16       402(g)(3)(A), (B), or (C) of the Internal Revenue  
17       Code of 1986 (other than elective deferrals under  
18       section 401(k)(11) of such Code),

19               (2) elective contributions under an eligible de-  
20       ferred compensation plan described in section 457(b)  
21       of such Code, and

22               (3) to the extent provided by the Secretary,  
23       elective deferrals described in section 402(g)(3)(D)  
24       or 401(k)(11) of such Code.

1 Such rules shall only permit such contributions or defer-  
2 rals with respect to payments of bona fide accumulated  
3 sick leave, accumulated vacation pay, severance, or back  
4 pay. The Secretary may apply such other conditions on  
5 such contributions or deferrals as are necessary or appro-  
6 priate to carry out the purposes of this section.

7 (b) TREATMENT OF DEFERRALS.—Except as other-  
8 wise determined by the Secretary to be necessary to carry  
9 out the purposes of this section, the rules described in sub-  
10 section (a) shall provide that the contributions or deferrals  
11 shall, for purposes of section 457 of such Code and sub-  
12 chapter D of chapter 1 of subtitle A of such Code, be  
13 treated as contributions or deferrals made on behalf of ac-  
14 tive employees, not on behalf of former employees.

15 (c) EFFECTIVE DATE.—The provisions of this section  
16 shall take effect on the date of enactment of this Act.

17 **SEC. 515. REFORM OF THE MINIMUM PARTICIPATION RULE.**

18 (a) IN GENERAL.—Subparagraph (I) of section  
19 401(a)(26) of the Internal Revenue Code of 1986 (relating  
20 to additional participation requirements) is amended by  
21 adding at the end the following: “Not later than December  
22 31, 2006, the Secretary shall issue final regulations under  
23 which this paragraph may be applied separately to bona  
24 fide separate subsidiaries or divisions.”.

1 (b) EFFECTIVE DATE.—The amendment made by  
 2 subsection (a) shall take effect on the date of enactment  
 3 of this Act.

## 4 **TITLE VI—IMPROVEMENTS IN** 5 **PENSION SECURITY**

### 6 **SEC. 601. PERIODIC PENSION BENEFITS STATEMENTS.**

7 (a) AMENDMENTS TO THE EMPLOYEE RETIREMENT  
 8 INCOME SECURITY ACT OF 1974.—

9 (1) REQUIREMENTS.—

10 (A) IN GENERAL.—Section 105(a) of the  
 11 Employee Retirement Income Security Act of  
 12 1974 (29 U.S.C. 1025(a)) is amended to read  
 13 as follows:

14 “(a)(1)(A) The administrator of an individual ac-  
 15 count plan shall furnish a pension benefit statement—

16 “(i) to each plan participant at least annually,

17 “(ii) to each plan beneficiary upon written re-  
 18 quest, and

19 “(iii) in the case of an applicable individual ac-  
 20 count plan, to each individual who is a plan partici-  
 21 pant or beneficiary and who has a right to direct in-  
 22 vestments, at least quarterly.

23 “(B) The administrator of a defined benefit plan  
 24 shall furnish a pension benefit statement—

1           “(i) at least once every 3 years to each partici-  
2           pant with a nonforfeitable accrued benefit who is  
3           employed by the employer maintaining the plan at  
4           the time the statement is furnished to participants,  
5           and

6           “(ii) to a plan participant or plan beneficiary of  
7           the plan upon written request.

8 Information furnished under clause (i) to a participant  
9 may be based on reasonable estimates determined under  
10 regulations prescribed by the Secretary, in consultation  
11 with the Pension Benefit Guaranty Corporation.

12       “(2) A pension benefit statement under paragraph  
13 (1)—

14           “(A) shall indicate, on the basis of the latest  
15           available information—

16                   “(i) the total benefits accrued, and

17                   “(ii) the nonforfeitable pension benefits, if  
18                   any, which have accrued, or the earliest date on  
19                   which benefits will become nonforfeitable,

20           “(B) shall be written in a manner calculated to  
21           be understood by the average plan participant, and

22           “(C) may be provided in written form or in  
23           electronic or other appropriate form to the extent  
24           that such form is reasonably accessible to the recipi-  
25           ent.

1       “(3)(A) In the case of a defined benefit plan, the re-  
 2       quirements of paragraph (1)(B)(i) shall be treated as met  
 3       with respect to a participant if the administrator, at least  
 4       once each year, provides the participant with notice, at  
 5       the participant’s last known address, of the availability of  
 6       the pension benefit statement and the ways in which the  
 7       participant may obtain such statement. Such notice shall  
 8       be provided in written, electronic, or other appropriate  
 9       form, and may be included with other communications to  
 10      the participant if done in a manner reasonably designed  
 11      to attract the attention of the participant.

12      “(B) The Secretary may provide that years in which  
 13      no employee or former employee benefits (within the  
 14      meaning of section 410(b) of the Internal Revenue Code  
 15      of 1986) under the plan need not be taken into account  
 16      in determining the 3-year period under paragraph  
 17      (1)(B)(i).”.

18                               (B) CONFORMING AMENDMENTS.—

19                               (i) Section 105 of the Employee Re-  
 20                               tirement Income Security Act of 1974 (29  
 21                               U.S.C. 1025) is amended by striking sub-  
 22                               section (d).

23                               (ii) Section 105(b) of such Act (29  
 24                               U.S.C. 1025(b)) is amended to read as fol-  
 25                               lows:

1       “(b) In no case shall a participant or beneficiary of  
2 a plan be entitled to more than one statement described  
3 in clause (i) or (ii) of subsection (a)(1)(A) or clause (i)  
4 or (ii) of subsection (a)(1)(B), whichever is applicable, in  
5 any 12-month period. If such report is required under sub-  
6 section (a) to be furnished at least quarterly, the require-  
7 ments of the preceding sentence shall be applied with re-  
8 spect to each quarter in lieu of the 12-month period.”.

9           (2) INFORMATION REQUIRED FROM APPLICA-  
10 BLE INDIVIDUAL ACCOUNT PLANS.—Section 105 of  
11 such Act (as amended by paragraph (1)) is amended  
12 further by adding at the end the following new sub-  
13 section:

14       “(d)(1) The statements required to be provided at  
15 least quarterly under subsection (a)(1)(A)(iii) in the case  
16 of applicable individual account plans shall include (to-  
17 gether with the information required in subsection (a)) the  
18 following:

19           “(A) the value of each investment to which as-  
20 sets in the individual account have been allocated,  
21 determined as of the most recent valuation date  
22 under the plan, including the value of any assets  
23 held in the form of employer securities, without re-  
24 gard to whether such securities were contributed by



1 the plan sponsor or acquired at the direction of the  
 2 plan or of the participant or beneficiary,

3 “(B) an explanation, written in a manner cal-  
 4 culated to be understood by the average plan partici-  
 5 pant, of any limitations or restrictions on the right  
 6 of the participant or beneficiary to direct an invest-  
 7 ment, and

8 “(C) an explanation, written in a manner cal-  
 9 culated to be understood by the average plan partici-  
 10 pant, of the importance, for the long-term retire-  
 11 ment security of participants and beneficiaries, of a  
 12 well-balanced and diversified investment portfolio,  
 13 including a discussion of the risk of holding more  
 14 than 25 percent of a portfolio in the security of any  
 15 one entity, such as employer securities.

16 “(2) The Secretary shall issue guidance and model  
 17 notices which meet the requirements of this subsection.”.

18 (3) DEFINITION OF APPLICABLE INDIVIDUAL  
 19 ACCOUNT PLAN.—Section 3 of such Act (29 U.S.C.  
 20 1002) is amended by adding at the end the following  
 21 new paragraph:

22 “(42)(A) The term ‘applicable individual account  
 23 plan’ means any individual account plan, except that such  
 24 term does not include an employee stock ownership plan  
 25 (within the meaning of section 4975(e)(7) of the Internal

1 Revenue Code of 1986) unless there are any contributions  
2 to such plan (or earnings thereunder) held within such  
3 plan that are subject to subsection (k)(3) or (m)(2) of sec-  
4 tion 401 of the Internal Revenue Code of 1986. Such term  
5 shall not include a one-participant retirement plan.

6 “(B) The term ‘one-participant retirement plan’  
7 means a pension plan with respect to which the following  
8 requirements are met:

9 “(i) on the first day of the plan year—

10 “(I) the plan covered only one individual  
11 (or the individual and the individual’s spouse)  
12 and the individual owned 100 percent of the  
13 plan sponsor (whether or not incorporated), or

14 “(II) the plan covered only one or more  
15 partners (or partners and their spouses) in the  
16 plan sponsor;

17 “(ii) the plan meets the minimum coverage re-  
18 quirements of section 410(b) of the Internal Rev-  
19 enue Code of 1986 (as in effect on the date of the  
20 enactment of this paragraph) without being com-  
21 bined with any other plan of the business that covers  
22 the employees of the business;

23 “(iii) the plan does not provide benefits to any-  
24 one except the individual (and the individual’s  
25 spouse) or the partners (and their spouses);

1           “(iv) the plan does not cover a business that is  
2           a member of an affiliated service group, a controlled  
3           group of corporations, or a group of businesses  
4           under common control; and

5           “(v) the plan does not cover a business that  
6           leases employees.”.

7           (4) CIVIL PENALTIES FOR FAILURE TO PRO-  
8           VIDE QUARTERLY BENEFIT STATEMENTS.—Section  
9           502 of such Act (29 U.S.C. 1132) is amended—

10                   (A) in subsection (a)(6), by striking “(6),  
11                   or (7)” and inserting “(6), (7), or (8)”;

12                   (B) by redesignating paragraph (8) of sub-  
13                   section (c) as paragraph (9); and

14                   (C) by inserting after paragraph (7) of  
15                   subsection (c) the following new paragraph:

16           “(8) The Secretary may assess a civil penalty against  
17           any plan administrator of up to \$1,000 a day for each  
18           day on which the plan administrator has failed to comply  
19           with the requirements of clause (iii) of section  
20           105(a)(1)(A) and has not corrected such failure by pro-  
21           viding the required pension benefit statements to the af-  
22           fected participants and beneficiaries.”.

23           (5) MODEL STATEMENTS.—The Secretary of  
24           Labor shall, not later than 180 days after the date  
25           of the enactment of this Act, issue initial guidance

1 and a model benefit statement, written in a manner  
2 calculated to be understood by the average plan par-  
3 ticipant, that may be used by plan administrators in  
4 complying with the requirements of section 105 of  
5 the Employee Retirement Income Security Act of  
6 1974. Not later than 75 days after the date of the  
7 enactment of this Act, the Secretary shall promul-  
8 gate interim final rules necessary to carry out the  
9 amendments made by this subsection.

10 (b) AMENDMENTS TO THE INTERNAL REVENUE  
11 CODE OF 1986.—

12 (1) PROVISION OF INVESTMENT EDUCATION  
13 NOTICES TO PARTICIPANTS IN CERTAIN PLANS.—  
14 Section 414 of the Internal Revenue Code of 1986  
15 (relating to definitions and special rules) is amended  
16 by adding at the end the following:

17 “(aa) PROVISION OF INVESTMENT EDUCATION NO-  
18 TICES TO PARTICIPANTS IN CERTAIN PLANS.—

19 “(1) IN GENERAL.—The plan administrator of  
20 an applicable pension plan shall provide to each ap-  
21 plicable individual an investment education notice  
22 described in paragraph (2) at the time of the enroll-  
23 ment of the applicable individual in the plan and not  
24 less often than annually thereafter.

1           “(2) INVESTMENT EDUCATION NOTICE.—An in-  
2       vestment education notice is described in this para-  
3       graph if such notice contains—

4           “(A) an explanation, for the long-term re-  
5       irement security of participants and bene-  
6       ficiaries, of generally accepted investment prin-  
7       ciples, including principles of risk management  
8       and diversification, and

9           “(B) a discussion of the risk of holding  
10      substantial portions of a portfolio in the secu-  
11      rity of any one entity, such as employer securi-  
12      ties.

13          “(3) UNDERSTANDABILITY.—Each notice re-  
14      quired by paragraph (1) shall be written in a man-  
15      ner calculated to be understood by the average plan  
16      participant and shall provide sufficient information  
17      (as determined in accordance with guidance provided  
18      by the Secretary) to allow recipients to understand  
19      such notice.

20          “(4) FORM AND MANNER OF NOTICES.—The  
21      notices required by this subsection shall be in writ-  
22      ing, except that such notices may be in electronic or  
23      other form (or electronically posted on the plan’s  
24      website) to the extent that such form is reasonably  
25      accessible to the applicable individual.

1           “(5) DEFINITIONS.—For purposes of this sub-  
2       section—

3           “(A) APPLICABLE INDIVIDUAL.—The term  
4       ‘applicable individual’ means—

5           “(i) any participant in the applicable  
6       pension plan,

7           “(ii) any beneficiary who is an alter-  
8       nate payee (within the meaning of section  
9       414(p)(8)) under a qualified domestic rela-  
10      tions order (within the meaning of section  
11      414(p)(1)(A)), and

12          “(iii) any beneficiary of a deceased  
13      participant or alternate payee.

14          “(B) APPLICABLE PENSION PLAN.—The  
15      term ‘applicable pension plan’ means—

16          “(i) a plan described in clause (i), (ii),  
17      or (iv) of section 219(g)(5)(A), and

18          “(ii) an eligible deferred compensation  
19      plan (as defined in section 457(b)) of an  
20      eligible employer described in section  
21      457(e)(1)(A),

22      which permits any participant to direct the in-  
23      vestment of some or all of his account in the  
24      plan or under which the accrued benefit of any  
25      participant depends in whole or in part on hy-

pothetical investments directed by the participant. Such term shall not include a one-participant retirement plan or a plan to which section 105 of the Employee Retirement Income Security Act of 1974 applies.

“(C) ONE-PARTICIPANT RETIREMENT PLAN DEFINED.—The term ‘one-participant retirement plan’ means a retirement plan with respect to which the following requirements are met:

“(i) on the first day of the plan year—

“(I) the plan covered only one individual (or the individual and the individual’s spouse) and the individual owned 100 percent of the plan sponsor (whether or not incorporated), or

“(II) the plan covered only one or more partners (or partners and their spouses) in the plan sponsor;

“(ii) the plan meets the minimum coverage requirements of 410(b) without being combined with any other plan of the business that covers the employees of the business;

1                   “(iii) the plan does not provide bene-  
 2                   fits to anyone except the individual (and  
 3                   the individual’s spouse) or the partners  
 4                   (and their spouses);

5                   “(iv) the plan does not cover a busi-  
 6                   ness that is a member of an affiliated serv-  
 7                   ice group, a controlled group of corpora-  
 8                   tions, or a group of businesses under com-  
 9                   mon control; and

10                  “(v) the plan does not cover a busi-  
 11                  ness that leases employees.

12                  “(6) CROSS REFERENCE.—For provisions relat-  
 13                  ing to penalty for failure to provide the notice re-  
 14                  quired by this section, see section 6652(m).”.

15                  (2) PENALTY FOR FAILURE TO PROVIDE NO-  
 16                  TICE.—Section 6652 of such Code (relating to fail-  
 17                  ure to file certain information returns, registration  
 18                  statements, etc.) is amended by redesignating sub-  
 19                  section (m) as subsection (n) and by inserting after  
 20                  subsection (l) the following new subsection:

21                  “(m) FAILURE TO PROVIDE INVESTMENT EDU-  
 22                  CATION NOTICES TO PARTICIPANTS IN CERTAIN  
 23                  PLANS.—In the case of each failure to provide a written  
 24                  explanation as required by section 414(aa) with respect  
 25                  to an applicable individual (as defined in such section),



1 at the time prescribed therefor, unless it is shown that  
 2 such failure is due to reasonable cause and not to willful  
 3 neglect, there shall be paid, on notice and demand of the  
 4 Secretary and in the same manner as tax, by the person  
 5 failing to provide such notice, an amount equal to \$100  
 6 for each such failure, but the total amount imposed on  
 7 such person for all such failures during any calendar year  
 8 shall not exceed \$50,000.”.

9 **SEC. 602. INAPPLICABILITY OF RELIEF FROM FIDUCIARY**  
 10 **LIABILITY DURING BLACKOUT PERIODS.**

11 (a) IN GENERAL.—Section 404(c) of the Employee  
 12 Retirement Income Security Act of 1974 (29 U.S.C.  
 13 1104(c)) is amended by adding at the end the following  
 14 new paragraph:

15 “(4)(A) Paragraph (1)(B) shall not apply in connec-  
 16 tion with the direction or diversification of assets credited  
 17 to the account of any participant or beneficiary during a  
 18 blackout period if, by reason of the imposition of such  
 19 blackout period, the ability of such participant or bene-  
 20 ficiary to direct or diversify such assets is suspended, lim-  
 21 ited, or restricted.

22 “(B) If the fiduciary authorizing a blackout period  
 23 meets the requirements of this title in connection with au-  
 24 thorizing such blackout period, no person who is a fidu-  
 25 ciary shall be liable under this title for any loss occurring

1 during the blackout period as a result of any exercise by  
2 the participant or beneficiary of control over assets in his  
3 or her account prior to the blackout period. Matters to  
4 be considered in determining whether a fiduciary has met  
5 the requirements of this title include whether such fidu-  
6 ciary—

7           “(i) has considered the reasonableness of the  
8           expected length of the blackout period,

9           “(ii) has provided the notice required under sec-  
10          tion 101(i)(2), and

11          “(iii) has acted in accordance with the require-  
12          ments of subsection (a) in determining whether to  
13          enter into the blackout period.

14          “(C) If a blackout period arises in connection with  
15 a change in the investment options offered under the plan,  
16 a participant or beneficiary shall be deemed to have exer-  
17 cised control over the assets in his or her account prior  
18 to the blackout period, if, after reasonable notice of the  
19 change in investment options is given to such participant  
20 or beneficiary before such blackout period, assets in the  
21 account of the participant or beneficiary are transferred—

22           “(i) to plan investment options in accordance  
23          with the affirmative election of the participant or  
24          beneficiary, or

1           “(ii) in any case in which there is no such elec-  
2           tion, in the manner set forth in such notice.

3           “(D) Any imposition of any limitation or restriction  
4 that may govern the frequency of transfers between invest-  
5 ment vehicles shall not be treated as the imposition of a  
6 blackout period to the extent such limitation or restriction  
7 is disclosed to participants or beneficiaries through the  
8 summary plan description or materials describing specific  
9 investment alternatives under the plan.

10          “(E) For purposes of this paragraph, the term ‘black-  
11 out period’ has the meaning given such term by section  
12 101(i)(7).”.

13          (b) GUIDANCE.—The Secretary of Labor shall, on or  
14 before December 31, 2006, issue interim final regulations  
15 providing guidance on how plan sponsors or any other af-  
16 fected fiduciaries can satisfy their fiduciary responsibilities  
17 during any blackout period during which the ability of a  
18 participant or beneficiary to direct the investment of as-  
19 sets in his or her individual account is suspended.

20 **SEC. 603. DIVERSIFICATION REQUIREMENTS FOR DEFINED**  
21 **CONTRIBUTION PLANS THAT HOLD EM-**  
22 **PLOYER SECURITIES.**

23          (a) AMENDMENT TO THE EMPLOYEE RETIREMENT  
24 INCOME SECURITY ACT OF 1974.—Section 204 of the

1 Employee Retirement Income Security Act of 1974 (29  
2 U.S.C. 1054) is amended—

3 (1) by redesignating subsection (j) as sub-  
4 section (k); and

5 (2) by inserting after subsection (i) the fol-  
6 lowing new subsection:

7 “(j) DIVERSIFICATION REQUIREMENTS FOR INDIVIDUAL ACCOUNT PLANS THAT HOLD EMPLOYER SECURITIES.—

10 “(1) IN GENERAL.—An applicable individual account plan shall meet the requirements of paragraphs (2) and (3).

13 “(2) EMPLOYEE CONTRIBUTIONS AND ELECTIVE DEFERRALS INVESTED IN EMPLOYER SECURITIES.—In the case of the portion of the account attributable to employee contributions and elective deferrals which is invested in employer securities, a plan meets the requirements of this paragraph if  
16 each applicable individual may elect to direct the  
17 plan to divest any such securities in the individual’s  
18 account and to reinvest an equivalent amount in  
19 other investment options which meet the requirements of paragraph (4).

24 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN  
25 EMPLOYER SECURITIES.—

1           “(A) IN GENERAL.—In the case of the por-  
2           tion of the account attributable to employer  
3           contributions (other than elective deferrals to  
4           which paragraph (2) applies) which is invested  
5           in employer securities, a plan meets the require-  
6           ments of this paragraph if, under the plan—

7                   “(i) each applicable individual with a  
8                   benefit based on 3 years of service may  
9                   elect to direct the plan to divest any such  
10                  securities in the individual’s account and  
11                  to reinvest an equivalent amount in other  
12                  investment options which meet the require-  
13                  ments of paragraph (4), or

14                  “(ii) with respect to any employer se-  
15                  curity allocated to an applicable individ-  
16                  ual’s account during any plan year, such  
17                  applicable individual may elect to direct  
18                  the plan to divest such employer security  
19                  after a date which is not later than 3 years  
20                  after the end of such plan year and to re-  
21                  invest an equivalent amount in other in-  
22                  vestment options which meet the require-  
23                  ments of paragraph (4).

24           “(B) APPLICABLE INDIVIDUAL WITH BEN-  
25           EFIT BASED ON 3 YEARS OF SERVICE.—For

1 purposes of subparagraph (A), an applicable in-  
2 dividual has a benefit based on 3 years of serv-  
3 ice if such individual would be an applicable in-  
4 dividual if only participants in the plan who  
5 have completed at least 3 years of service (as  
6 determined under section 203(b)) were referred  
7 to in paragraph (5)(B)(i).

8 “(4) INVESTMENT OPTIONS.—The requirements  
9 of this paragraph are met if—

10 “(A) the plan offers not less than 3 invest-  
11 ment options, other than employer securities, to  
12 which an applicable individual may direct the  
13 proceeds from the divestment of employer secu-  
14 rities pursuant to this subsection, each of which  
15 is diversified and has materially different risk  
16 and return characteristics, and

17 “(B) the plan permits the applicable indi-  
18 vidual to choose from any of the investment op-  
19 tions made available under the plan to which  
20 such proceeds may be so directed, subject to  
21 such restrictions as may be provided by the  
22 plan limiting such choice to periodic, reasonable  
23 opportunities occurring no less frequently than  
24 on a quarterly basis.

1           “(5) DEFINITIONS AND RULES.—For purposes  
2 of this subsection—

3           “(A) APPLICABLE INDIVIDUAL ACCOUNT  
4 PLAN.—The term ‘applicable individual account  
5 plan’ means any individual account plan, except  
6 that such term does not include an employee  
7 stock ownership plan (within the meaning of  
8 section 4975(e)(7) of the Internal Revenue  
9 Code of 1986) unless there are any contribu-  
10 tions to such plan (or earnings thereon) held  
11 within such plan that are subject to subsection  
12 (k)(3) or (m)(2) of section 401 of the Internal  
13 Revenue Code of 1986.

14           “(B) APPLICABLE INDIVIDUAL.—The term  
15 ‘applicable individual’ means—

16           “(i) any participant in the plan, and

17           “(ii) any beneficiary of a participant  
18 referred to in clause (i) who has an ac-  
19 count under the plan with respect to which  
20 the beneficiary is entitled to exercise the  
21 rights of the participant.

22           “(C) ELECTIVE DEFERRAL.—The term  
23 ‘elective deferral’ means an employer contribu-  
24 tion described in section 402(g)(3)(A) of the In-

1           ternal Revenue Code of 1986 (as in effect on  
2           the date of the enactment of this subsection).

3           “(D) EMPLOYER SECURITY.—The term  
4           ‘employer security’ shall have the meaning  
5           given such term by section 407(d)(1) of this  
6           Act (as in effect on the date of the enactment  
7           of this subsection).

8           “(E) EMPLOYEE STOCK OWNERSHIP  
9           PLAN.—The term ‘employee stock ownership  
10          plan’ shall have the same meaning given to  
11          such term by section 4975(e)(7) of the Internal  
12          Revenue Code of 1986 (as in effect on the date  
13          of the enactment of this subsection).

14          “(F) ELECTIONS.—Elections under this  
15          subsection may be made not less frequently  
16          than quarterly.

17          “(6) EXCEPTION WHERE THERE IS NO READILY  
18          TRADABLE STOCK.—This subsection shall not apply  
19          if there is no class of stock issued by the employer  
20          (or by a corporation which is an affiliate of the em-  
21          ployer (as defined in section 407(d)(7))) that is  
22          readily tradable on an established securities market  
23          (or in such other circumstances as may be deter-  
24          mined jointly by the Secretary of Labor and the Sec-  
25          retary of the Treasury in regulations).



1 “(7) TRANSITION RULE.—

2 “(A) IN GENERAL.—In the case of any in-  
 3 dividual account plan which, on the first day of  
 4 the first plan year to which this subsection ap-  
 5 plies, holds employer securities of any class that  
 6 were acquired before such date and on which  
 7 there is a restriction on diversification otherwise  
 8 precluded by this subsection, this subsection  
 9 shall apply to such securities of such class held  
 10 in any plan year only with respect to the num-  
 11 ber of such securities equal to the applicable  
 12 percentage of the total number of such securi-  
 13 ties of such class held on such date.

14 “(B) APPLICABLE PERCENTAGE.—For  
 15 purposes of subparagraph (A), the applicable  
 16 percentage shall be as follows:

<b>“Plan years for which provisions are effective:</b>	<b>Applicable percentage:</b>
1st plan year .....	20
2nd plan year .....	40
3rd plan year .....	60
4th plan year .....	80
5th plan year or thereafter .....	100.

17 “(C) ELECTIVE DEFERRALS TREATED AS  
 18 SEPARATE PLAN NOT INDIVIDUAL ACCOUNT  
 19 PLAN.—For purposes of subparagraph (A), the  
 20 applicable percentage shall be 100 percent with  
 21 respect to—

1 “(i) employee contributions to a plan  
 2 under which any portion attributable to  
 3 elective deferrals is treated as a separate  
 4 plan under section 407(b)(2) as of the date  
 5 of the enactment of this paragraph, and

6 “(ii) such elective deferrals.

7 “(D) COORDINATION WITH PRIOR ELEC-  
 8 TIONS.—In any case in which a divestiture of  
 9 investment in employer securities of any class  
 10 held by an employee stock ownership plan prior  
 11 to the effective date of this subsection was un-  
 12 dertaken pursuant to other applicable Federal  
 13 law prior to such date, the applicable percent-  
 14 age (as determined without regard to this sub-  
 15 paragraph) in connection with such securities  
 16 shall be reduced to the extent necessary to ac-  
 17 count for the amount to which such election ap-  
 18 plied.

19 “(8) REGULATIONS.—The Secretary of the  
 20 Treasury shall prescribe regulations under this sub-  
 21 section in consultation with the Secretary of  
 22 Labor.”.

23 (b) AMENDMENTS TO THE INTERNAL REVENUE  
 24 CODE OF 1986.—

1           (1) IN GENERAL.—Section 401(a) of the Inter-  
2       nal Revenue Code of 1986 (relating to requirements  
3       for qualification) is amended by inserting after para-  
4       graph (34) the following new paragraph:

5           “(35) DIVERSIFICATION REQUIREMENTS FOR  
6       DEFINED CONTRIBUTION PLANS THAT HOLD EM-  
7       PLOYER SECURITIES.—

8           “(A) IN GENERAL.—An applicable defined  
9       contribution plan shall meet the requirements  
10      of subparagraphs (B) and (C).

11          “(B) EMPLOYEE CONTRIBUTIONS AND  
12      ELECTIVE DEFERRALS INVESTED IN EMPLOYER  
13      SECURITIES.—In the case of the portion of the  
14      account attributable to employee contributions  
15      and elective deferrals which is invested in em-  
16      ployer securities, a plan meets the requirements  
17      of this subparagraph if each applicable indi-  
18      vidual in such plan may elect to direct the plan  
19      to divest any such securities in the individual’s  
20      account and to reinvest an equivalent amount  
21      in other investment options which meet the re-  
22      quirements of subparagraph (D).

23          “(C) EMPLOYER CONTRIBUTIONS IN-  
24      VESTED IN EMPLOYER SECURITIES.—

1           “(i) IN GENERAL.—In the case of the  
2           portion of the account attributable to em-  
3           ployer contributions (other than elective  
4           deferrals to which subparagraph (B) ap-  
5           plies) which is invested in employer securi-  
6           ties, a plan meets the requirements of this  
7           subparagraph if, under the plan—

8                   “(I) each applicable individual  
9                   with a benefit based on 3 years of  
10                  service may elect to direct the plan to  
11                  divest any such securities in the indi-  
12                  vidual’s account and to reinvest an  
13                  equivalent amount in other investment  
14                  options which meet the requirements  
15                  of subparagraph (D), or

16                  “(II) with respect to any em-  
17                  ployer security allocated to an applica-  
18                  ble individual’s account during any  
19                  plan year, such applicable individual  
20                  may elect to direct the plan to divest  
21                  such employer security after a date  
22                  which is not later than 3 years after  
23                  the end of such plan year and to rein-  
24                  vest an equivalent amount in other in-

1 vestment options which meet the re-  
2 quirements of subparagraph (D).

3 “(ii) APPLICABLE INDIVIDUAL WITH  
4 BENEFIT BASED ON 3 YEARS OF SERV-  
5 ICE.—For purposes of clause (i), an appli-  
6 cable individual has a benefit based on 3  
7 years of service if such individual would be  
8 an applicable individual if only participants  
9 in the plan who have completed at least 3  
10 years of service (as determined under sec-  
11 tion 411(a)) were referred to in subpara-  
12 graph (E)(ii)(I).

13 “(D) INVESTMENT OPTIONS.—The require-  
14 ments of this subparagraph are met if—

15 “(i) the plan offers not less than 3 in-  
16 vestment options, other than employer se-  
17 curities, to which an applicable individual  
18 may direct the proceeds from the divest-  
19 ment of employer securities pursuant to  
20 this paragraph, each of which is diversified  
21 and has materially different risk and re-  
22 turn characteristics, and

23 “(ii) the plan permits the applicable  
24 individual to choose from any of the invest-  
25 ment options made available under the

1 plan to which such proceeds may be so di-  
2 rected, subject to such restrictions as may  
3 be provided by the plan limiting such  
4 choice to periodic, reasonable opportunities  
5 occurring no less frequently than on a  
6 quarterly basis.

7 “(E) DEFINITIONS AND RULES.—For pur-  
8 poses of this paragraph—

9 “(i) APPLICABLE DEFINED CONTRIBU-  
10 TION PLAN.—The term ‘applicable defined  
11 contribution plan’ means any defined con-  
12 tribution plan, except that such term does  
13 not include an employee stock ownership  
14 plan (within the meaning of section  
15 4975(e)(7)) unless there are any contribu-  
16 tions to such plan (or earnings thereon)  
17 held within such plan that are subject to  
18 subsection (k)(3) or (m)(2).

19 “(ii) APPLICABLE INDIVIDUAL.—The  
20 term ‘applicable individual’ means—

21 “(I) any participant in the plan,  
22 and

23 “(II) any beneficiary of a partici-  
24 pant referred to in clause (i) who has  
25 an account under the plan with re-

1                   spect to which the beneficiary is enti-  
2                   tled to exercise the rights of the par-  
3                   ticipant.

4                   “(iii)   ELECTIVE   DEFERRAL.—The  
5                   term ‘elective deferral’ means an employer  
6                   contribution   described   in   section  
7                   402(g)(3)(A) (as in effect on the date of  
8                   the enactment of this paragraph).

9                   “(iv)   EMPLOYER   SECURITY.—The  
10                  term ‘employer security’ shall have the  
11                  meaning given such term by section  
12                  407(d)(1) of the Employee Retirement In-  
13                  come Security Act of 1974 (as in effect on  
14                  the date of the enactment of this para-  
15                  graph).

16                  “(v)   EMPLOYEE   STOCK   OWNERSHIP  
17                  PLAN.—The term ‘employee stock owner-  
18                  ship plan’ shall have the same meaning  
19                  given to such term by section 4975(e)(7)  
20                  of the Internal Revenue Code of 1986 (as  
21                  in effect on the date of the enactment of  
22                  this paragraph).

23                  “(vi)   ELECTIONS.—Elections   under  
24                  this paragraph may be made not less fre-  
25                  quently than quarterly.

1           “(F) EXCEPTION WHERE THERE IS NO  
2           READILY TRADABLE STOCK.—This paragraph  
3           shall not apply if there is no class of stock  
4           issued by the employer that is readily tradable  
5           on an established securities market (or in such  
6           other circumstances as may be determined  
7           jointly by the Secretary of the Treasury and the  
8           Secretary of Labor in regulations).

9           “(G) TRANSITION RULE.—

10           “(i) IN GENERAL.—In the case of any  
11           defined contribution plan which, on the ef-  
12           fective date of this subsection, holds em-  
13           ployer securities of any class that were ac-  
14           quired before such date and on which there  
15           is a restriction on diversification otherwise  
16           precluded by this paragraph, this para-  
17           graph shall apply to such securities of such  
18           class held in any plan year only with re-  
19           spect to the number of such securities  
20           equal to the applicable percentage of the  
21           total number of such securities of such  
22           class held on such date.

23           “(ii) APPLICABLE PERCENTAGE.—For  
24           purposes of clause (i), the applicable per-  
25           centage shall be as follows:



**“Plan years for which provisions  
are effective:                      Applicable percentage:**

1st plan year .....	20
2nd plan year .....	40
3rd plan year .....	60
4th plan year .....	80
5th plan year or thereafter .....	100.

1                      “(iii) ELECTIVE DEFERRALS TREATED  
2                      AS SEPARATE PLAN NOT INDIVIDUAL AC-  
3                      COUNT PLAN.—For purposes of clause (i),  
4                      the applicable percentage shall be 100 per-  
5                      cent with respect to—

6                      “(I) employee contributions to a  
7                      plan under which any portion attrib-  
8                      utable to elective deferrals is treated  
9                      as a separate plan under section  
10                     407(b)(2) of the Employee Retirement  
11                     Income Security Act of 1974 as of the  
12                     date of the enactment of this para-  
13                     graph, and

14                     “(II) such elective deferrals.

15                     “(iv) CONTRIBUTIONS HELD WITHIN  
16                     AN ESOP.—In the case of contributions  
17                     (other than elective deferrals and employee  
18                     contributions) held within an employee  
19                     stock ownership plan, in the case of the 1st  
20                     and 2nd plan years referred to in the table  
21                     in clause (ii), the applicable percentage  
22                     shall be the greater of the amount deter-

mined under clause (ii) or the percentage determined under paragraph (28) (determined as if paragraph (28) applied to a plan described in this paragraph).

“(v) COORDINATION WITH PRIOR ELECTIONS UNDER PARAGRAPH (28).—In any case in which a divestiture of investment in employer securities of any class held by an employee stock ownership plan prior to the effective date of this paragraph was undertaken pursuant to an election under paragraph (28) prior to such date, the applicable percentage (as determined without regard to this clause) in connection with such securities shall be reduced to the extent necessary to account for the amount to which such election applied.

“(H) REGULATIONS.—The Secretary shall prescribe regulations under this paragraph in consultation with the Secretary of Labor.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 401(a)(28) of such Code is amended by adding at the end the following new subparagraph:

1           “(D) APPLICATION.—This paragraph shall  
2           not apply to a plan to which paragraph (35) ap-  
3           plies.”.

4           (B) Section 409(h)(7) of such Code is  
5           amended by inserting before the period at the  
6           end “or subparagraph (B) or (C) of section  
7           401(a)(35)”.

8           (C) Section 4980(c)(3)(A) of such Code is  
9           amended by striking “if—” and all that follows  
10          and inserting “if the requirements of subpara-  
11          graphs (B), (C), and (D) are met.”.

12       (c) EFFECTIVE DATE.—

13           (1) IN GENERAL.—Except as provided in para-  
14          graph (2) and section 604, the amendments made by  
15          this section shall apply to plan years beginning after  
16          December 31, 2005, and with respect to employer  
17          securities allocated to accounts before, on, or after  
18          the date of the enactment of this Act.

19           (2) EXCEPTION.—The amendments made by  
20          this section shall not apply to employer securities  
21          held by an employee stock ownership plan which are  
22          acquired before January 1, 1987.

23   **SEC. 604. EFFECTIVE DATES AND RELATED RULES.**

24           (a) IN GENERAL.—Except as otherwise provided in  
25          the preceding provisions of this title or in subsection (c),

1 the amendments made by this title shall apply with respect  
2 to plan years beginning on or after the general effective  
3 date.

4 (b) GENERAL EFFECTIVE DATE.—For purposes of  
5 this section, the term “general effective date” means the  
6 date which is 1 year after the date of the enactment of  
7 this Act.

8 (c) SPECIAL RULE FOR COLLECTIVELY BARGAINED  
9 PLANS.—In the case of a plan maintained pursuant to 1  
10 or more collective bargaining agreements between em-  
11 ployee representatives and 1 or more employers ratified  
12 on or before the date of the enactment of this Act, sub-  
13 section (a) shall be applied to benefits pursuant to, and  
14 individuals covered by, any such agreement by substituting  
15 for “the general effective date” the date of the commence-  
16 ment of the first plan year beginning on or after the ear-  
17 lier of—

18 (1) the later of—

19 (A) the date which is 1 year after the gen-  
20 eral effective date, or

21 (B) the date on which the last of such col-  
22 lective bargaining agreements terminates (de-  
23 termined without regard to any extension there-  
24 of after the date of the enactment of this Act),  
25 or

1           (2) the date which is 2 years after the general  
2           effective date.

3   **TITLE VII—OTHER TAX PROVI-**  
4   **SIONS RELATING TO PEN-**  
5   **SIONS**

6   **SEC. 701. REPORTING SIMPLIFICATION.**

7           (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
8   OWNERS AND THEIR SPOUSES.—

9           (1) IN GENERAL.—The Secretary of the Treas-  
10          ury and the Secretary of Labor shall modify the re-  
11          quirements for filing annual returns with respect to  
12          one-participant retirement plans to ensure that such  
13          plans with assets of \$250,000 or less as of the close  
14          of the plan year need not file a return for that year.

15          (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
16          FINED.—For purposes of this subsection, the term  
17          “one-participant retirement plan” means a retire-  
18          ment plan with respect to which the following re-  
19          quirements are met:

20                 (A) on the first day of the plan year—

21                         (i) the plan covered only one indi-  
22                         vidual (or the individual and the individ-  
23                         ual’s spouse) and the individual owned 100  
24                         percent of the plan sponsor (whether or  
25                         not incorporated), or

1 (ii) the plan covered only one or more  
2 partners (or partners and their spouses) in  
3 the plan sponsor;

4 (B) the plan meets the minimum coverage  
5 requirements of section 410(b) of the Internal  
6 Revenue Code of 1986 without being combined  
7 with any other plan of the business that covers  
8 the employees of the business;

9 (C) the plan does not provide benefits to  
10 anyone except the individual (and the individ-  
11 ual's spouse) or the partners (and their  
12 spouses);

13 (D) the plan does not cover a business that  
14 is a member of an affiliated service group, a  
15 controlled group of corporations, or a group of  
16 businesses under common control; and

17 (E) the plan does not cover a business that  
18 leases employees.

19 (3) OTHER DEFINITIONS.—Terms used in para-  
20 graph (2) which are also used in section 414 of the  
21 Internal Revenue Code of 1986 shall have the re-  
22 spective meanings given such terms by such section.

23 (4) EFFECTIVE DATE.—The provisions of this  
24 subsection shall apply to plan years beginning on or  
25 after January 1, 2005.

1       (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
2 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case  
3 of plan years beginning after December 31, 2006, the Sec-  
4 retary of the Treasury and the Secretary of Labor shall  
5 provide for the filing of a simplified annual return for any  
6 retirement plan which covers less than 25 employees on  
7 the first day of a plan year and which meets the require-  
8 ments described in subparagraphs (B), (D), and (E) of  
9 subsection (a)(2).

10 **SEC. 702. IMPROVEMENT OF EMPLOYEE PLANS COMPLI-**  
11 **ANCE RESOLUTION SYSTEM.**

12       The Secretary of the Treasury shall continue to up-  
13 date and improve the Employee Plans Compliance Resolu-  
14 tion System (or any successor program) giving special at-  
15 tention to—

16           (1) increasing the awareness and knowledge of  
17 small employers concerning the availability and use  
18 of the program;

19           (2) taking into account special concerns and  
20 circumstances that small employers face with respect  
21 to compliance and correction of compliance failures;

22           (3) extending the duration of the self-correction  
23 period under the Self-Correction Program for signifi-  
24 cant compliance failures;

1 (4) expanding the availability to correct insignificant compliance failures under the Self-Correction Program during audit; and

2 (5) assuring that any tax, penalty, or sanction that is imposed by reason of a compliance failure is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

3 The Secretary of the Treasury shall have full authority to effectuate the foregoing and to implement the Employee Plans Compliance Resolution System (or any successor program) and any other employee plans correction policies, including the authority to waive income, excise, or other taxes to ensure that any tax, penalty, or sanction is not excessive and bears a reasonable relationship to the nature, extent, and severity of the failure.

4 **SEC. 703. EXTENSION OF MORATORIUM ON APPLICATION**  
 5 **OF CERTAIN NONDISCRIMINATION RULES TO**  
 6 **ALL GOVERNMENTAL PLANS.**

7 (a) IN GENERAL.—

8 (1) Subparagraph (G) of section 401(a)(5) and subparagraph (G) of section 401(a)(26) of the Internal Revenue Code of 1986 are each amended by striking “section 414(d))” and all that follows and inserting “section 414(d)).”.



1           (2) Subparagraph (G) of section 401(k)(3) of  
 2           such Code and paragraph (2) of section 1505(d) of  
 3           the Taxpayer Relief Act of 1997 (26 U.S.C. 401  
 4           note) are each amended by striking “maintained by  
 5           a State or local government or political subdivision  
 6           thereof (or agency or instrumentality thereof)”.

7           (b) CONFORMING AMENDMENTS.—

8           (1) The heading for subparagraph (G) of sec-  
 9           tion 401(a)(5) of such Code is amended to read as  
 10          follows: “GOVERNMENTAL PLANS.—”.

11          (2) The heading for subparagraph (G) of sec-  
 12          tion 401(a)(26) of such Code is amended to read as  
 13          follows: “EXCEPTION FOR GOVERNMENTAL PLANS.—  
 14          ”.

15          (3) Subparagraph (G) of section 401(k)(3) of  
 16          such Code is amended by inserting “GOVERN-  
 17          MENTAL PLANS.—” after “(G)”.

18          (c) EFFECTIVE DATE.—The amendments made by  
 19          this section shall apply to years beginning after December  
 20          31, 2005.

21       **SEC. 704. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
 22       **TRIBUTIONS.**

23          (a) EXPANSION OF PERIOD.—

24               (1) AMENDMENT OF INTERNAL REVENUE  
 25               CODE.—

1 (A) IN GENERAL.—Subparagraph (A) of  
2 section 417(a)(6) of the Internal Revenue Code  
3 of 1986 is amended by striking “90-day” and  
4 inserting “180-day”.

5 (B) MODIFICATION OF REGULATIONS.—  
6 The Secretary of the Treasury shall modify the  
7 regulations under sections 402(f), 411(a)(11),  
8 and 417 of the Internal Revenue Code of 1986  
9 to substitute “180 days” for “90 days” each  
10 place it appears in Treasury Regulations sec-  
11 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–  
12 1(b).

13 (2) AMENDMENT OF ERISA.—

14 (A) IN GENERAL.—Section 205(c)(7)(A) of  
15 the Employee Retirement Income Security Act  
16 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended  
17 by striking “90-day” and inserting “180-day”.

18 (B) MODIFICATION OF REGULATIONS.—  
19 The Secretary of the Treasury shall modify the  
20 regulations under part 2 of subtitle B of title  
21 I of the Employee Retirement Income Security  
22 Act of 1974 to the extent that they relate to  
23 sections 203(e) and 205 of such Act to sub-  
24 stitute “180 days” for “90 days” each place it  
25 appears.

1           (3) EFFECTIVE DATE.—The amendments made  
2       by paragraphs (1)(A) and (2)(A) and the modifica-  
3       tions required by paragraphs (1)(B) and (2)(B)  
4       shall apply to years beginning after December 31,  
5       2005.

6       (b) CONSENT REGULATION INAPPLICABLE TO CER-  
7       TAIN DISTRIBUTIONS.—

8           (1) IN GENERAL.—The Secretary of the Treas-  
9       ury shall modify the regulations under section  
10      411(a)(11) of the Internal Revenue Code of 1986  
11      and under section 205 of the Employee Retirement  
12      Income Security Act of 1974 to provide that the de-  
13      scription of a participant's right, if any, to defer re-  
14      ceipt of a distribution shall also describe the con-  
15      sequences of failing to defer such receipt.

16      (2) EFFECTIVE DATE.—

17           (A) IN GENERAL.—The modifications re-  
18      quired by paragraph (1) shall apply to years be-  
19      ginning after December 31, 2005.

20           (B) REASONABLE NOTICE.—In the case of  
21      any description of such consequences made be-  
22      fore the date that is 90 days after the date on  
23      which the Secretary of the Treasury issues a  
24      safe harbor description under paragraph (1), a  
25      plan shall not be treated as failing to satisfy the

1 requirements of section 411(a)(11) of such  
2 Code or section 205 of such Act by reason of  
3 the failure to provide the information required  
4 by the modifications made under paragraph (1)  
5 if the Administrator of such plan makes a rea-  
6 sonable attempt to comply with such require-  
7 ments.

8 **SEC. 705. QUALIFIED GROUP LEGAL SERVICES PLANS.**

9 (a) IN GENERAL.—Subsection (e) of section 120 of  
10 the Internal Revenue Code of 1986 is amended to read  
11 as follows:

12 “(e) APPLICATION OF SECTION.—This section and  
13 section 501(c)(20) shall apply to taxable years begin-  
14 ning—

15 “(1) after December 31, 1976, and before July  
16 1, 1992, and

17 “(2) after December 31, 2005, and before Jan-  
18 uary 1, 2009.”.

19 (b) INCREASE IN MAXIMUM EXCLUSION.—The last  
20 sentence of section 120(a) of such Code is amended by  
21 striking “\$70” and inserting “\$150”.

22 (c) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to taxable years beginning after  
24 December 31, 2005.

1 **SEC. 706. TAX-FREE DISTRIBUTIONS FROM INDIVIDUAL RE-**  
 2 **TIREMENT PLANS FOR CHARITABLE PUR-**  
 3 **POSES.**

4 (a) IN GENERAL.—Subsection (d) of section 408 of  
 5 the Internal Revenue Code of 1986 (relating to individual  
 6 retirement accounts) is amended by adding at the end the  
 7 following new paragraph:

8 “(8) DISTRIBUTIONS FOR CHARITABLE PUR-  
 9 POSES.—

10 “(A) IN GENERAL.—No amount shall be  
 11 includible in gross income by reason of a quali-  
 12 fied charitable distribution.

13 “(B) QUALIFIED CHARITABLE DISTRIBUTION.—For purposes of this paragraph, the  
 14 term ‘qualified charitable distribution’ means  
 15 any distribution from an individual retirement  
 16 plan other than a plan described in subsection  
 17 (k) or (p) of section 408—

18 “(i) which is made on or after the  
 19 date that the individual for whose benefit  
 20 the plan is maintained has attained age  
 21 70½, and  
 22

23 “(ii) which is made directly by the  
 24 trustee—

25 “(I) to an organization described  
 26 in section 170(c), or

1 “(II) to a split-interest entity.

2 A distribution shall be treated as a qualified  
3 charitable distribution only to the extent that  
4 the distribution would be includible in gross in-  
5 come without regard to subparagraph (A) and,  
6 in the case of a distribution to a split-interest  
7 entity, only if no person holds an income inter-  
8 est in the amounts in the split-interest entity  
9 attributable to such distribution other than one  
10 or more of the following: the individual for  
11 whose benefit such plan is maintained, the  
12 spouse of such individual, or any organization  
13 described in section 170(c).

14 “(C) CONTRIBUTIONS MUST BE OTHER-  
15 WISE DEDUCTIBLE.—For purposes of this para-  
16 graph—

17 “(i) DIRECT CONTRIBUTIONS.—A dis-  
18 tribution to an organization described in  
19 section 170(c) shall be treated as a quali-  
20 fied charitable distribution only if a deduc-  
21 tion for the entire distribution would be al-  
22 lowable under section 170 (determined  
23 without regard to subsection (b) thereof  
24 and this paragraph).

1           “(ii) SPLIT-INTEREST GIFTS.—A dis-  
2           tribution to a split-interest entity shall be  
3           treated as a qualified charitable distribu-  
4           tion only if a deduction for the entire value  
5           of the interest in the distribution for the  
6           use of an organization described in section  
7           170(c) would be allowable under section  
8           170 (determined without regard to sub-  
9           section (b) thereof and this paragraph).

10          “(D) APPLICATION OF SECTION 72.—Not-  
11          withstanding section 72, in determining the ex-  
12          tent to which a distribution is a qualified chari-  
13          table distribution, the entire amount of the dis-  
14          tribution shall be treated as includible in gross  
15          income without regard to subparagraph (A) to  
16          the extent that such amount does not exceed  
17          the aggregate amount which would have been so  
18          includible if all amounts distributed from all in-  
19          dividual retirement plans were treated as 1 con-  
20          tract under paragraph (2)(A) for purposes of  
21          determining the inclusion of such distribution  
22          under section 72. Proper adjustments shall be  
23          made in applying section 72 to other distribu-  
24          tions in such taxable year and subsequent tax-  
25          able years.

1                   “(E) SPECIAL RULES FOR SPLIT-INTEREST  
2 ENTITIES.—

3                   “(i) CHARITABLE REMAINDER  
4 TRUSTS.—Notwithstanding section 664(b),  
5 distributions made from a trust described  
6 in subparagraph (G)(i) shall be treated as  
7 ordinary income in the hands of the bene-  
8 ficiary to whom is paid the annuity de-  
9 scribed in section 664(d)(1)(A) or the pay-  
10 ment described in section 664(d)(2)(A).

11                   “(ii) POOLED INCOME FUNDS.—No  
12 amount shall be includible in the gross in-  
13 come of a pooled income fund (as defined  
14 in subparagraph (G)(ii)) by reason of a  
15 qualified charitable distribution to such  
16 fund, and all distributions from the fund  
17 which are attributable to qualified chari-  
18 table distributions shall be treated as ordi-  
19 nary income to the beneficiary.

20                   “(iii) CHARITABLE GIFT ANNU-  
21 ITIES.—Qualified charitable distributions  
22 made for a charitable gift annuity shall not  
23 be treated as an investment in the con-  
24 tract.



1           “(F) DENIAL OF DEDUCTION.—Qualified  
 2           charitable distributions shall not be taken into  
 3           account in determining the deduction under sec-  
 4           tion 170.

5           “(G) SPLIT-INTEREST ENTITY DEFINED.—  
 6           For purposes of this paragraph, the term ‘split-  
 7           interest entity’ means—

8                   “(i) a charitable remainder annuity  
 9                   trust or a charitable remainder unitrust  
 10                  (as such terms are defined in section  
 11                  664(d)) which must be funded exclusively  
 12                  by qualified charitable distributions,

13                   “(ii) a pooled income fund (as defined  
 14                   in section 642(c)(5)), but only if the fund  
 15                   accounts separately for amounts attrib-  
 16                   utable to qualified charitable distributions,  
 17                   and

18                   “(iii) a charitable gift annuity (as de-  
 19                   fined in section 501(m)(5)).”.

20           (b) MODIFICATIONS RELATING TO INFORMATION RE-  
 21           TURNS BY CERTAIN TRUSTS.—

22                   (1) RETURNS.—Section 6034 of such Code (re-  
 23                   lating to returns by trusts described in section  
 24                   4947(a)(2) or claiming charitable deductions under  
 25                   section 642(c)) is amended to read as follows:

1 **“SEC. 6034. RETURNS BY TRUSTS DESCRIBED IN SECTION**  
2 **4947(a)(2) OR CLAIMING CHARITABLE DEDUC-**  
3 **TIONS UNDER SECTION 642(c).**

4 “(a) TRUSTS DESCRIBED IN SECTION 4947(a)(2).—  
5 Every trust described in section 4947(a)(2) shall furnish  
6 such information with respect to the taxable year as the  
7 Secretary may by forms or regulations require.

8 “(b) TRUSTS CLAIMING A CHARITABLE DEDUCTION  
9 UNDER SECTION 642(c).—

10 “(1) IN GENERAL.—Every trust not required to  
11 file a return under subsection (a) but claiming a de-  
12 duction under section 642(c) for the taxable year  
13 shall furnish such information with respect to such  
14 taxable year as the Secretary may by forms or regu-  
15 lations prescribe, including—

16 “(A) the amount of the deduction taken  
17 under section 642(c) within such year,

18 “(B) the amount paid out within such year  
19 which represents amounts for which deductions  
20 under section 642(c) have been taken in prior  
21 years,

22 “(C) the amount for which such deductions  
23 have been taken in prior years but which has  
24 not been paid out at the beginning of such year,

1           “(D) the amount paid out of principal in  
2           the current and prior years for the purposes de-  
3           scribed in section 642(c),

4           “(E) the total income of the trust within  
5           such year and the expenses attributable thereto,  
6           and

7           “(F) a balance sheet showing the assets, li-  
8           abilities, and net worth of the trust as of the  
9           beginning of such year.

10          “(2) EXCEPTIONS.—Paragraph (1) shall not  
11          apply to a trust for any taxable year if—

12               “(A) all the net income for such year, de-  
13               termined under the applicable principles of the  
14               law of trusts, is required to be distributed cur-  
15               rently to the beneficiaries, or

16               “(B) the trust is described in section  
17               4947(a)(1).”.

18          (2) INCREASE IN PENALTY RELATING TO FIL-  
19          ING OF INFORMATION RETURN BY SPLIT-INTEREST  
20          TRUSTS.—Paragraph (2) of section 6652(c) of such  
21          Code (relating to returns by exempt organizations  
22          and by certain trusts) is amended by adding at the  
23          end the following new subparagraph:

24               “(C) SPLIT-INTEREST TRUSTS.—In the  
25          case of a trust which is required to file a return

1 under section 6034(a), subparagraphs (A) and  
2 (B) of this paragraph shall not apply and para-  
3 graph (1) shall apply in the same manner as if  
4 such return were required under section 6033,  
5 except that—

6 “(i) the 5 percent limitation in the  
7 second sentence of paragraph (1)(A) shall  
8 not apply,

9 “(ii) in the case of any trust with  
10 gross income in excess of \$250,000, the  
11 first sentence of paragraph (1)(A) shall be  
12 applied by substituting ‘\$100’ for ‘\$20’,  
13 and the second sentence thereof shall be  
14 applied by substituting ‘\$50,000’ for  
15 ‘\$10,000’, and

16 “(iii) the third sentence of paragraph  
17 (1)(A) shall be disregarded.

18 In addition to any penalty imposed on the trust  
19 pursuant to this subparagraph, if the person re-  
20 quired to file such return knowingly fails to file  
21 the return, such penalty shall also be imposed  
22 on such person who shall be personally liable  
23 for such penalty.”.

24 (3) CONFIDENTIALITY OF NONCHARITABLE  
25 BENEFICIARIES.—Subsection (b) of section 6104 of

such Code (relating to inspection of annual information returns) is amended by adding at the end the following new sentence: “In the case of a trust which is required to file a return under section 6034(a), this subsection shall not apply to information regarding beneficiaries which are not organizations described in section 170(c).”.

(c) EFFECTIVE DATES.—

(1) SUBSECTION (a).—The amendment made by subsection (a) shall apply to distributions made after December 31, 2005.

(2) SUBSECTION (b).—The amendments made by subsection (b) shall apply to returns for taxable years beginning after December 31, 2005.

## **TITLE VIII—MISCELLANEOUS PROVISIONS**

### **SEC. 801. PROVISIONS RELATING TO PLAN AMENDMENTS.**

(a) IN GENERAL.—If this section applies to any plan or contract amendment—

(1) such plan or contract shall be treated as being operated in accordance with the terms of the plan during the period described in subsection (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the re-

1        requirements of section 411(d)(6) of the Internal Rev-  
2        enue Code of 1986 and section 204(g) of the Em-  
3        ployee Retirement Income Security Act of 1974 by  
4        reason of such amendment.

5        (b) AMENDMENTS TO WHICH SECTION APPLIES.—

6            (1) IN GENERAL.—This section shall apply to  
7        any amendment to any plan or annuity contract  
8        which is made—

9            (A) pursuant to any amendment made by  
10        this Act or title VI of the Economic Growth and  
11        Tax Relief Reconciliation Act of 2001, or pur-  
12        suant to any regulation issued by the Secretary  
13        of the Treasury or the Secretary of Labor  
14        under this Act or such title VI, and

15          (B) on or before the last day of the first  
16        plan year beginning on or after January 1,  
17        2008.

18        In the case of a governmental plan (as defined in  
19        section 414(d) of the Internal Revenue Code of  
20        1986), this paragraph shall be applied by sub-  
21        stituting “2010” for “2008”.

22          (2) CONDITIONS.—This section shall not apply  
23        to any amendment unless—

24            (A) during the period—

1 (i) beginning on the date the legisla-  
2 tive or regulatory amendment described in  
3 paragraph (1)(A) takes effect (or in the  
4 case of a plan or contract amendment not  
5 required by such legislative or regulatory  
6 amendment, the effective date specified by  
7 the plan), and

8 (ii) ending on the date described in  
9 paragraph (1)(B) (or, if earlier, the date  
10 the plan or contract amendment is adopt-  
11 ed),

12 the plan or contract is operated as if such plan  
13 or contract amendment were in effect; and

14 (B) such plan or contract amendment ap-  
15 plies retroactively for such period.

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